

***United States Court of Appeals  
for the  
District of Columbia Circuit***



**TRANSCRIPT OF  
RECORD**



660

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 23,012

NATIONAL AIR CARRIER ASSOCIATION; AMERICAN FLYERS AIRLINE CORPORATION; CAPITOL INTERNATIONAL AIRWAYS, INC.; OVERSEAS NATIONAL AIRWAYS, INC.; SATURN AIRWAYS, INC.; TRANS INTERNATIONAL AIRLINES, INC.; WORLD AIRWAYS, INC.,

*Petitioners,*

v.

CIVIL AERONAUTICS BOARD,

*Respondent,*

PAN AMERICAN WORLD AIRWAYS, INC., ET AL.,

*Intervenors.*

United States Court of Appeals  
for the District of Columbia Circuit

*On Petition for Review of Orders of the  
Civil Aeronautics Board*

FILED OCT 31 1969

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APPENDIX

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Motion of Bureau of Enforcement for leave to file late answer to motion for joinder of necessary and indispensable parties (June 26, 1969) . . . . .

Telegram from Pan American requesting that application of condition relating to Philadelphia/Washington/Baltimore fares be extended to August 1, 1969 (June 26, 1969) . . . . .

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Telegram from City of Philadelphia in opposition to Pan American's request that application of condition relating to Philadelphia/Washington/Baltimore fares be delayed

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Order 69-7-20 deferring until August 1, 1969 application of condition relating to Philadelphia/Washington/Baltimore fares

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(July 7, 1969) . . . . .

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Answer of Bureau of Economics to Motion of Panmarc, Inc. et al. for extension of time to file petition for reconsideration

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(July 16, 1969) . . . . .

UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board  
at its office in Washington, D. C.,  
on the 3rd day of March, 1969

Agreements adopted by Joint	:	Docket 20781
Conferences 1-2 and 1-2-3 of the	:	Agreement C.A.B. 20848
International Air Transport	:	R-1 through R-12,
Association (IATA) relating to	:	and R-14 through R-68
transatlantic fares	:	

ORDER

There have been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, agreements between various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Joint Conferences 1-2 and 1-2-3 of the International Air Transport Association (IATA), adopted at meetings held in Dallas, Texas, in January 1969.

The agreements, among other things, embrace fare resolutions to apply <sup>1/</sup> via North and Mid Atlantic routes from May 1, 1969, through March 31, 1971. Included among them is a resolution which would extend the effectiveness of current fares, now scheduled to expire March 31, 1969, through the month of April 1969, or until such time as the new resolutions become effective. We are herein approving this resolution so as to allow time within which to evaluate the revisions proposed in the pattern of North Atlantic fares.

The essential elements of the fare agreement are apparent, although the Board has not yet received the accompanying fare tables and supporting documentation. These include elimination of the 5-percent round-trip discount; availability of the current 14-21-day excursion fares on a year-round basis, with added charges when travel is in the heretofore precluded peak summer weeks and on weekends; introduction of contract bulk fares for inclusive tours; and introduction of "incentive" group fares to be available except in peak travel months. The last two resolutions appear to be those elements of the agreement which are most controversial and, as such, are reproduced in the appendices hereto.

The Board has been advised <sup>2/</sup> that at least one complaint will be lodged against the agreement, and that others may be forthcoming. In view of the

<sup>1/</sup> The agreements also include related fare resolutions applicable to travel via the North Atlantic to/from the Orient.

<sup>2/</sup> Letter dated February 27, 1969, from the National Air Carrier Association, Inc.

fact that the agreement contains controversial elements and is intended to become effective in a relatively short period of time, the Board believes it desirable to establish a schedule for the receipt of comments. The Board's intention in doing so is not only to insure a full record, but to expedite its consideration of that record to the end that the Board will be in a position to act on the agreements as far in advance of the intended effectiveness date as possible.

The procedural dates which the Board has decided upon are as follows:

Full documentation and economic justification from the carriers	March 13, 1969
Complaints and objections from interested parties	March 27, 1969
Answers to complaints	April 7, 1969

The Board, acting pursuant to sections 102, 204(a), and 412 of the Act, does not find Agreement C.A.B. 20848, R-9 (IATA Resolution 002g, Interim Revalidation--North and Mid Atlantic--Expedited) to be adverse to the public interest or in violation of the Act.

Accordingly, IT IS ORDERED THAT:

Agreement C.A.B. 20848, R-9, be, and it hereby is, approved.

This order will be published in the Federal Register.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON

Secretary

(SEAL)

12  
BEFORE THE  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D.C.

-----  
IATA TRANSATLANTIC FARE :  
AGREEMENTS :  
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Docket 20781  
Agreement C.A.B. 20848

PETITION OF MEMBER CARRIERS OF THE  
NATIONAL AIR CARRIER ASSOCIATION FOR  
RECONSIDERATION

The undersigned supplemental air carriers, represented by <sup>1/</sup> the National Air Carrier Association (NACA) as their attorney-in-fact, hereby petition the Board, pursuant to Rule 37 of the Board's Rules of Practice, for reconsideration of Order 69-3-1, March 3, 1969, and request the Board, upon reconsideration, to order a full evidentiary investigation in connection with its determination under Section 412(b) of the Act whether to approve those IATA resolutions which eliminate the round-trip discount on basic North Atlantic economy and first class fares (Resolution 150a) and which adopt low North Atlantic bulk and group fares (Resolutions 076a, 076m, 076p, 079a, 084a).

In support whereof, the NACA carriers state as follows:

I.

By Order 69-3-1, the Board undertook to establish procedures and procedural dates in connection with the recent IATA resolutions covering transatlantic fares. We believe that the Board erred in deciding to rely upon a mere exchange of written pleadings - i.e., "economic

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<sup>1/</sup> In accordance with Part 263 of the Board's Economic Regulations, written powers of attorney from the signatory carriers are being submitted.

justification," complaint and answer - to illuminate the many complex and important issues raised by the fare resolutions. We submit that only an evidentiary investigation, with a right of cross-examination, can provide an adequate factual basis for Board action.

The present situation is governed, we believe, by the Board's decision ordering an evidentiary investigation in Group Inclusive Tour Fares to Hawaii, Docket 20580. (Order 68-12-114, December 20, 1968.) In that case, as here, group fares for groups of 40 or more were adopted in a prime supplemental charter market; there, as here, the group fare levels approximated charter rates; and there, as here, the fares presented serious issues of discrimination, reasonableness and adverse economic impact upon supplemental carriers. In fact, in the present case, where the bulk and group fares have been adopted by the concerted action of competing carriers and in conjunction with a basic fare increase, the need for an evidentiary proceeding is even greater.

The Board's investigation should, we believe, be directed to those portions of the IATA North Atlantic fare package which (1) eliminate the existing 5 per cent round-trip discount on basic economy and first class fares, thereby effecting a fare increase, and (2) adopt a panoply of low bulk and group fares. The latter fares include bulk contract inclusive tour fares (Resolution 079a); affinity and incentive group fares (076e, 076m, 076p); and group inclusive tour fares (Resolution 084a).

As to the bulk and group fares, two points stand out. First, they are extremely low, ranging as low as 40 per cent of basic economy fares for groups as small as 40 eastbound and 20 westbound. For example, the New York-London bulk fare (off-season, no stopovers) is



only \$175 round trip. This is about 2.53 cents per mile, or virtually on a par with charter rates. Second, the array of bulk and group fares is quite clearly aimed at the affluence and inclusive tour charter traffic of the supplementals. This much is clear not only to the supplementals and the press<sup>2/</sup> but is confirmed by the inclusion of escape clauses in a number of resolutions which make specific reference to the competition of "non-IATA" carriers.<sup>3/</sup>

Under Section 412(b) the Board cannot approve the instant IATA fare agreements if it finds them "to be adverse to the public interest, or in violation of this Act . . . ." Its "assessment of the public interest is governed by the broad considerations set forth in Section 102 of the Federal Aviation Act, and by due regard for antitrust policies and principles." VOLUNTAIR Agreement, 30 C.A.B. 1007, 1009 (1960) (footnote omitted). As we show below, the fare agreements present many issues bearing directly on a public interest determination, which issues can appropriately be examined only in an evidentiary investigation.

## II.

A. Any determination of the public interest with respect to a fare agreement will, of course, be directly affected by whether the

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2/ See, e.g., Wall Street Journal article reproduced as Exhibit A hereto.

3/ Compare IATA Group Fares Agreement, 36 C.A.B. 33, 45 (1962), where Vice Chairman Murphy and Member Minetti stated:

"We believe that the record developed in this proceeding contains more than a suggestion that the group-fare proposal was designed, at least in part, to cut back non-IATA competition offered by American charter carriers on the North Atlantic run . . . ."



fares are unreasonably low (see §102(c) of the Act). Since the bulk and group fares have been fixed at unprecedented levels approximating charter rates, they are probably unreasonably low. But the detailed analysis of cost data, estimates of self-diversion, etc., which are entailed in any determination of reasonableness cannot be accomplished in a simple exchange of written pleadings. Discovery is needed to uncover cost studies of the carriers prepared before the fare levels were set. And cross-examination of carrier witnesses is required to expose the doubtful assumptions and questionable judgment factors that invariably lie hidden in any economic justification.

Similarly, the great disparity in the treatment of group and basic fare passengers traveling on the same flights - which has been widened by the elimination of the round-trip discount on basic fares contemporaneously with the adoption of the low bulk and group fares - may well present an unjust discrimination (see Sections 102(c) and 1002(f) of the Act). Indeed, under Board precedent, the affinity group fares appear to be unjustly discriminatory, and a fortiori the new incentive group fares.<sup>4/</sup> The asserted justifications for fare discriminations, however, are often factual in nature - e.g., that the fare will achieve special promotional goals or that the favored class is characterized by unusually elastic demand - and cannot be tested in written pleadings. As in the Group Inclusive Tour Fares to Hawaii investigation (Docket 20580), the youth fare investigation (Docket 18936) and many others, the discrimination issue is appropriately resolved in an evidentiary proceeding.

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<sup>4/</sup> See Free and Reduced-Rate Transportation Case, 14 C.A.B. 481, 489, 509 (1951); Capital Group Student Fares, 25 C.A.B. 280 (1957); IATA Agreements, Group Excursion Fares, 26 C.A.B. 755, 756 (1958). But see IATA Group Fares Agreement, 36 C.A.B. 33, 41 (1962).

Also, the issue whether there is justification for a transatlantic fare increase (via elimination of the round-trip discount) involves economic evidence of a kind which should be explored at a hearing, in the context of the carriers' economic justification for the low bulk and group fares.

B. We start from the premise that the fare agreements constitute a naked violation of the antitrust laws and that their proponents bear a heavy burden of proof in persuading the Board that approval of the agreements - and their consequent immunization under Section 414 - will not contravene the public interest. Local Cartage Agreement Case, 15 C.A.B. 350, 352-53 (1952).<sup>5/</sup> In the instant case, there are in addition to the bare agreement on price substantial indications of predatory intent on the part of IATA carriers. The bulk and group fares are, as we have noted, evidently directed at the charter traffic of the supplementals. Moreover, the elimination of the round-trip discount

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<sup>5/</sup> The Board there stated (*ibid.*):

"The other basic consideration is that the Board, in determining whether an agreement is adverse to the public interest under section 412 of the Act, cannot ignore the question of whether such an agreement may run counter to the principles and purposes of the antitrust laws. The approval of an agreement under section 412 exempts the agreement from the operation of the antitrust laws by virtue of section 414. While this exemption demonstrates the Board's power to approve agreements which otherwise would violate the antitrust laws, it also imposes upon the Board, in determining the effect on the public interest of agreements for which approval is sought, the duty to evaluate such agreements in the light of antitrust policy and principles. Where an agreement has among its significant aspects elements which are plainly repugnant to established antitrust principles, approval should not be granted unless there is a clear showing that the agreement is required by a serious transportation need, or in order to secure important public benefits." (Footnote omitted.)

will afford greatly increased revenues to the IATA carriers which may be used to subsidize the very low bulk and group fares - in effect a war chest for use against the supplementals.<sup>6/</sup> Clearly, these fare agreements, if so used, would constitute an unfair and destructive competitive practice contrary to the public interest (see §102(c)) and not "required by a serious transportation need, or in order to secure important public benefits" (Local Cartage, supra).

But proper adjudication of these issues plainly requires an evidentiary proceeding. For example, full discovery and cross-examination will be needed to ascertain any predatory motive for the bulk and group fares. And the issue of the competitive impact of those fares upon the supplementals, and their subsidization by an increase in basic fares, will require the development of detailed economic facts. In VOLUMAIR Agreement, supra, where the agreement in question was comparatively clear and uncomplicated, the Board nonetheless concluded, due to the potential impact of the agreement upon the supplementals, that "some form of hearing is appropriate." 30 C.A.B. at 1016. See also Local Cartage Agreement Case, supra (evidentiary hearing held to explore, inter alia, the impact of a Section 412 agreement on independent truckers).

C. The bulk fare resolution on its face contains a number of features which appear to render the tour operators indirect air

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<sup>6/</sup> The extension of the 14-21 day excursion fare to weekend periods - with a substantial surcharge (see Resolution 070d) - will, we submit, be self-supporting and thus cannot serve as an offset to or justification for an increase in basic fares. We understand that last summer the IATA carriers tended to have higher load factors on weekdays than on weekends because of the blackout of promotional fares.

carriers. Among other things, a tour operator must enter into a contract with a direct air carrier for the required number of seats; he is charged for the entire space whether he uses it or not; and he receives no commission at all from the direct air carrier. Surely, the Board's public interest determination as to the bulk fare agreement may be affected if the agreement involves the use of unauthorized indirect air carriers in violation of Section 401 of the Act.

But this issue is also best determined in an evidentiary proceeding. Only at a hearing can interested parties explore in full the manner in which written rules will operate in practice. And if the tour operators are indeed indirect air carriers, the rules and regulations required to govern their operations should appropriately be fashioned from the testimony of witnesses. <sup>7/</sup>

### III.

To be sure, it will be difficult to complete an evidentiary proceeding in time to meet the May 1st date imposed by IATA for elimination of the round-trip discounts and for effectiveness of some of the fares in the package. However, adequate protection of the public interest requires an evidentiary investigation, and IATA should not be allowed to circumvent this requirement by self-imposed deadlines. It may be possible to complete an evidentiary proceeding within even the time limits set by IATA if the proceeding is conducted on a highly expedited

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<sup>7/</sup> The absence of such regulations would put the supplementals at a severe competitive disadvantage in promoting ITC's, since ITC tour operators are subject to bonding and other restrictions. Also, as we understand the bulk fare resolution, the public receives no financial protection from the air carrier, and the Board may well find it difficult to exercise any control over the operation of bulk inclusive tours.

basis - for example, an examiner's decision perhaps could be dispensed with. The supplementals stand ready to cooperate fully in such an expedited proceeding.

CONCLUSION

For all of the foregoing reasons, the Board should reconsider Order 69-3-1 and, upon such reconsideration, institute an evidentiary investigation of the IATA resolutions eliminating the round-trip discount on basic fares and adopting the various bulk and group fares.

Respectfully submitted,

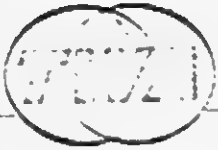
AMERICAN FLYERS AIRLINE CORP.  
CAPITOL INTERNATIONAL AIRWAYS, INC.  
MODERN AIR TRANSPORT, INC.  
OVERSEAS NATIONAL AIRWAYS, INC.  
PURDUE AIRLINES, INC.  
SOUTHERN AIR TRANSPORT, INC.  
STANDARD AIRWAYS, INC.  
TRANS INTERNATIONAL AIRLINES, INC.  
UNIVERSAL AIRLINES, INC.  
WORLD AIRWAYS, INC.

By

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Counsel for  
National Air Carrier Association

March 7, 1969



**TRANS WORLD AIRLINES, Inc.**

405 THIRD AVENUE

NEW YORK, NEW YORK, U.S.A. 10016

March 12, 1969

U. S. Civil Aeronautics Board  
1825 Connecticut Avenue, N.W.  
Washington, D.C. 20428

Gentlemen:

In response to CAB Order No. 69-3-1, Trans World Airlines (TWA) submits herewith pertinent data and economic justification in support of the several IATA Resolutions agreed by the Dallas Traffic Conference Meeting, and essentially representing the North Atlantic "fares package." TWA is an active Member of the Joint Area 1/2 and 1/2/3 Traffic Conferences which are responsible for these agreements, and has fully participated in their negotiations. This submission offers justification for TWA's concurrence in the resulting fare changes which we sincerely believe to be in the public interest, and on which we respectfully request early consideration and approval by the Board. Such action will preserve the smooth continuity of agreed IATA fares and provide the public with prompt information on the benefits of these agreements, which are related to fares for scheduled services.

Against a disturbing industry background of rising costs, diminishing yields, increased supplemental carrier competition, political unrests, and the introduction of large capacity aircraft, IATA convened the 1968 (extending well into 1969) Worldwide Passenger Conference in Cannes, France. Inasmuch as the CAB has received copies of Situation Reports and interim Minutes from the various meetings that were required, it is a matter of public record that IATA Members met almost continuously since September 12, 1968 in an effort to reach accord on North Atlantic and JT 1/2/3 (Via India) fares. Agreement was finally reached for the latter two Joint Conference Areas on February 1, 1969 at Dallas, Texas. The Resolutions were set forth in an undated document from Geneva, Switzerland entitled "Composite and Joint Meetings of Traffic Conferences - Passenger Resolutions (Finally Adopted) - Dallas, 1969."

To facilitate your review of the essential changes, we have prepared a brief digest on the following items:

- I. Normal Fares, including abolition of the round Trip Discount
- II. North Atlantic 21-Day Excursion Fares
- III. North Atlantic Individual Inclusive Tour Fares
- IV. North Atlantic Group Inclusive Tour Fares



V. North Atlantic Affinity Group Fares

VI. North Atlantic Incentive Groups

VII. North Atlantic Contract Bulk Inclusive  
Tour Fares

VIII. North Atlantic Family Fares

In each of the Attachments, TWA has endeavored to present the problems that were encountered together with economic support data relating to the solutions. While TWA was successful in implementing many of its proposals, we are reasonably certain that the Board is aware of the fact that the final product within IATA comes as a result of reconciling seriously conflicting economic interest, creating strong competitive forces directed at specific national markets, and compromise, which is the dominating influence.

TWA wishes to point out most earnestly to the Board, that the two-year period for which this IATA agreement will be in effect, promises to be extremely difficult for North Atlantic carriers, including TWA. The Board is aware of the extraordinary labor cost escalation which is taking place in the United States, and, sometimes even more seriously, in overseas countries. The Board is also aware that the very heavy introductory costs for the 747 must be borne during this two-year period, and experience shows that the benefits of this new type of aircraft will not be seen until the agreement has expired. The result of the several significant cost level increases which will occur, will place severe stress upon TWA's profit margins on the North Atlantic in the next two years.

While TWA is seriously concerned with the extent of supplemental carrier competition assigned to the North Atlantic routes by foreign as well as U. S. flag carriers, we submit that the IATA Dallas Conference "fares package" provides new low promotional fares as well as reductions in certain existing promotional fares and is, therefore, in the public interest. These particular negotiations have also encouraged the North Atlantic Members to provide greater attention to the economic characteristics of the North Atlantic routes with additional studies being planned for an improvement in the fare structure. While we believe that the elimination of the round trip discount will provide slightly higher revenues as a partial offset to the continuing upward spiral in costs, an even more substantial contribution is required in the form of increased traffic, which we believe can only be obtained through a judicious application of lower and competitive promotional fares.

Your early approval of the fares agreement is respectfully requested.

Yours very truly,



John R. Barch  
Vice President  
Industry Association Affairs

Summary

Existing North Atlantic normal fares (first class and economy) were revealed to be based on a fare structure supported by TWA on the premise that it was to be a viable fare and further, that the fare of one-way fares was a portion of passengers using regular fares. The result of this calculation is a small reduction in yield per mile. The following table shows the yield per mile

<u>FIRST CLASS</u> (per mile)		<u>Yield</u> (per mile)	<u>REGULAR ECONOMY</u> (per mile)
1962	\$1.1000	\$1.0568	\$1.0567
1963	.0986	.0986	.0564
1964	.0986	.0986	.0546

TWA would point out that these yields are substantially below comparable yields in other international markets, especially when judged alongside non-stop West Coast to Japan routes across the Pacific.

Against this background of forced action, in view of the fact that in general normal fare traffic to and from the Atlantic aggregate represents a relatively inelastic market, flag carriers quickly concluded that the abolition of the rule represented the prime action for solving the economic difficulties recently beset the entire scheduled carrier industry. While the flag carriers held to the position of retaining the rule, it was the major roadblock to securing an agreed to a unified support for its abolition.

Only when the CAB responded to U.S. carrier requests for Washington discussions of this matter in a favorable light, did the other carriers consent to consider compensating adjustments to the 14/21 Day excursion and Individual Inclusive Tour Fares. Fares to "open" and the alternate solution apparently acceptable to the CAB. Flag carriers consented to abstain from the abolition of the rule, pending acceptance of "compensating" adjustments to the 14/21 Day excursion and Individual IT Fares. As will be seen in later sections of this report, TWA believed these adjustments were realistic.

In accepting abolition of the rule, it should be remembered that TWA was not the only carrier that would lose normal fare revenues as passengers but it was the only carrier that would lose the 14/21 Day excursion and Individual IT Fares. These new fares were "opening" and down-



grading to these fares is assumed. While U.S. Flag carriers transport a larger percent of the total normal fare market, on an industry-wide basis, however, the abolition of the round trip discount represents a substantially lower average sum to each carrier.

Finally, TWA accepted the abolition of the round trip discount only after a complete review and reasonable assurance that the U.S. Travel Agent's position would not be impaired. At the outset Travel Agents were wary of the fact that passengers might choose to buy a one-way ticket only, opting to purchase return tickets in Europe. Experience, however, clearly illustrates that passengers over-whelmingly prefer to make all prior arrangements in the U.S. prior to departure. This ensures reserved space and financial "peace-of-mind". Furthermore, our domestic experience shows no change in passenger habits on this score, and a timely review of international habits revealed a similar reaction would prevail in 1969-1970.

## Trans World Airlines, Inc.

## Estimated Revenue Change

Elimination of International Round Trip Discounts

(1970)

<u>ROUND TRIP REVENUE</u>	1968 <u>(ACTUAL)</u> (000)	1970 <u>(ESTIMATED)</u> (000)
First Class	\$28,019	\$31,869
Peak Economy	19,676	24,717
Normal Economy	48,932	<u>57,431</u>
TOTAL		\$114,017
Revenue without the RT Discount ( ÷ .95)		120,018
Revenue Loss (Elasticity Approximates ( - 0.1)		<u>(600)</u>
NET REVENUE		\$119,418
Estimated 1970 revenue improvement from elimination of RT discount		<u>\$ 5,401</u>

North Atlantic 21-Day Excursion FareSummary:

The 21-Day Excursion Fare was amended to expand the applicability period to a year-round basis and revalidated for the coming two-year agreement. This change to "open up" the industry's most popular transatlantic fare represents a noteworthy and important fare reduction to the traveling public. Heretofor, the 14-21 Day Fare was "black-out" on weekends and during peak directional periods. The public is now afforded a new opportunity to travel on an individual basis at substantially lower fares as follows: (NYC-LON)

<u>Off-Peak</u>	<u>New Individual Excursion Fare</u>	<u>1967-68 Economy</u>	<u>1969-70 New Economy</u>	<u>Round Trip Dollar Saving</u>		<u>% Reduction From</u>	
				<u>Old EY</u>	<u>New EY</u>	<u>Old EY</u>	<u>New EY</u>
Weekend <u>1/</u>	\$300 <sup>3</sup>	\$399	\$420	\$69.00	\$90.00	17.3%	21.4%
Weekend <u>2/</u>	360	399	420	39.00	60.00	9.8%	14.3%
<u>Peak</u>							
Weekday	350	484.50	510	134.50	160.00	27.8	31.4
Weekend <u>1/</u>	380	484.50	510	104.50	130.00	21.6	25.5
Weekend <u>2/</u>	410	484.50	510	74.50	100.00	15.4	19.6

1/ Weekend travel in one direction.

2/ Weekend travel in both directions.

The amendment to the 14/21 Day Excursion Fare represents a peak season and weekend fare decrease and provides substantial contribution to the compensating adjustments called for by the CAB. While on the surface it would appear that decreases were introduced during the weekends and blackout periods only, this can only be regarded as part of the story. Each year, from TWA's revenue standpoint, these decreases take on added significance as passengers downgrade from normal fares to the 14/21 Day Excursion Fares. Normal economy fare profiles, for example, have dropped from 65.0% in 1963 to 43.7% in 1968. During this same period, the Excursion fare profile has increased, from 11.7% in 1963 to 22.7% in 1968. Furthermore, TWA fully expects these percentages to draw much closer together in 1969-70 as a result of this applicability period adjustment.

A breakdown of the potential revenue impact to TWA is included in Exhibit II:

## Trans World Airlines, Inc.

## Estimated Revenue Change

Expansion of 14/21 Day Excursion Fare to All Year Validity  
(1970)

In analyzing the effect on public reaction to opening up weekend and black-out travel at Excursion Fares, TWA has extracted the impact on passengers who now travel on Normal and Peak Economy fares from the impact on passengers who now travel on 14/21 Day Excursion Fares.

1. For passengers presently traveling on Normal Peak Economy fares, there will be new opportunities to use the 14/21 Day Excursion presently denied to them because of the weekend and peak period blackout restrictions. For these passengers, an unquestioned fare reduction occurs with the following estimated revenue effect for TWA in 1970:

<u>Estimated TWA - 1970</u>	<u>Passengers</u>	<u>Revenue Change</u> (000)
<u>Weekend Surcharge - Non-Blackout Period</u>		
Downgrading/Dilution: 1. from Peak Economy 3,159		\$ (393)
2. from Normal Economy 5,644		(220)
<u>Elimination of Blackout Period</u>		
Downgrading/Dilution: 1. from Peak Economy 3,330		(378)
2. from Normal Economy 1,091		(53)
Total	13,194	<u>\$ (1,044)</u>

2. For passengers presently traveling on the 14/21 Day Excursion fare, there will be an additional opportunity to travel on the weekend at a slightly higher fare level. This should represent a benefit to the traveling public, or otherwise no passengers would change their plans to pay the surcharge to travel in the previously blacked-out periods. Assuming an affirmative public response, the revenue gain to TWA from the passengers who choose to make the shift is as follows:

<u>Estimated TWA - 1970</u>	<u>Passengers</u>	<u>Revenue Change</u> (000)
<u>Weekend Surcharge - Non-Blackout Period</u>		
Estimated Shift to Weekend	20,522	\$1,252
<u>Elimination of Blackout Period</u>		
Estimated Shift to Surcharge Period	7,938	453
Total	28,460	<u>\$1,705</u>

North Atlantic Individual Inclusive Tour FareSummary:

In parallel action to that taken on the 14/21 Day Excursion Fare, the Individual Inclusive Tour Fare was also amended and revalidated to permit travel during current "blackout" periods at a \$50 surcharge plus a \$30 surcharge each way for weekend travel. For the public it affords the even greater advantage of traveling year round on an individual basis at substantially lower fares as follows:

	NEW INDIVIDUAL INCLUSIVE TOUR FARE	ECONOMY RT		DOLLAR SAVINGS FROM		% REDUCTION FROM	
		OLD	NEW	OLD Y	NEW Y	OLD Y	NEW Y
<u>Off Peak</u>							
Weekend <u>1/</u>	\$300	\$399.00	\$420.	\$99.00	\$120.00	24.8%	28.6%
Weekend <u>2/</u>	330	399.00	420.	69.00	90.00	17.3	21.4
<u>Peak</u>							
Weekday	320	\$484.50	\$510.	\$164.50	\$190.00	34.0%	37.3%
Weekend <u>1/</u>	350	484.50	510.	134.50	160.00	27.8	31.4
Weekend <u>2/</u>	380	484.50	510.	104.50	130.00	21.6	25.5

1/ Weekend travel in one direction.

2/ Weekend travel in both directions.

In support of these amendments TWA argued that the majority of second-generation tour passengers originating in the U.S. would prefer to travel to Europe unencumbered by the restrictions of traveling with a group. As in the 21-Day Excursion Fare, TWA fully expects downgrading from normal and 14/21 Day Excursion Fares. Whereas this fare has fallen off in popularity from a high of 5.8% in 1966 (nine months only) to a low of 3.1% in 1968; TWA now estimates the trend to be reversed in 1969-70 with a view toward increasing this percentage to 3.6% in 1970.

A breakdown of the potential revenue impact to TWA is included in Exhibit III.

## Trans World Airlines, Inc.

## Estimated Revenue Change

Expansion of the Individual Inclusive Tour Fare to All Year Validity  
(1970)

As in the case of the 14/21 Day Excursion fare, liberalizing the conditions of travel for the Individual Inclusive Tour fare to an all year validity will result in downgrading of passengers from Normal and Peak Economy fares. The following summarizes the economic impact on TWA for the year 1970:

Expansion of the Individual IT Fare to All Year Validity

<u>Estimated TWA - 1970</u>	<u>Passengers</u>	<u>Revenue Change</u> (000)
<u>Weekend Surcharge - Non-Blackout Period</u>		
Downgrading/Dilution: 1. from Peak Economy	647	\$ (81)
2. from Normal Economy	1,156	(45)
<u>Elimination of Blackout Period</u>		
Downgrading/Dilution: 1. from Peak Economy	676	(71)
2. from Normal Economy	224	(11)
Total	2,703	<u>\$ (208)</u>

Passengers presently traveling on the Individual Inclusive Tour Fare will be afforded the opportunity of traveling on weekends at a slightly higher fare level. Assuming an optimistic public response to the liberalized applicability period, passengers will shift to the weekends with the following estimated impact on TWA's 1970 revenue:

Expansion of the Individual IT Fare to All Year Validity

<u>Estimated TWA - 1970</u>	<u>Passengers</u>	<u>Revenue Change</u> (000)
<u>Weekend Surcharge - Non-Blackout Period</u>		
Estimated Shift to Weekend	2,386	\$143
<u>Elimination of Blackout Period</u>		
Estimated Shift to Weekend	1,626	93
Total	4,012	<u>\$236</u>

North Atlantic Group Inclusive Tour FaresSummary:

Existing Group Inclusive Tour Fares were revalidated for summer 1969 and winter 1969-1970, and amended to reflect an upward adjustment of \$10 plus tighter tour requirements for effect April 1, 1970 and beyond.

The Group Inclusive Tour Fare was introduced by IATA in the North Atlantic market in 1966 to provide a new low cost fare package for passengers (generally considered to be generative) desiring to tour Europe in a group. In 1967, 6.7% of the total passenger market selected the GIT fare and this percentage increased to 11.0% in 1968. Unfortunately, this fare became subject to substantial abuse when certain competitors seized upon an opportunity to use this fare for individual passengers, and developed a "throw-away package" consisting of fictitious hotel accommodations and a "free" car rental scheme. This development was an obvious circumvention of the intent of Resolution 087. U.S. Flag carriers followed the intent of the resolution, but were eventually carried into a competitive situation to survive. As a result, the new agreement provides for an increase in the tour price, a requirement for the provision of actual living accommodations and a prohibition against the give-away car rental schemes as a basis for the tour package.

During 1966-1968, TWA found that the fare levels and related routing/stopover accommodations were not economic for small groups of 15 (e.g. a yield of only \$.0330 per mile); therefore, TWA accepted a token increase for the 1969-1970 season of \$10 (\$8 to U.K. and Irish points) to improve the yield. Coupled with these fare adjustments, certain technical modifications were made. Stopovers were limited to five (including points of turnaround). While the absorption of passenger layover expenses was eliminated in line with an earlier U.S. government reservation in TC1, and the group will be required to travel together as was originally intended but overlooked in the drafting of language for the Resolution. Additionally, a charge of \$7 per day must be included in the Minimum Tour Price for tours exceeding 14 days. TWA considers the Group Inclusive Tour Fare to be a promotional fare and the amendments to the Resolution reflected above are intended to protect this intention.

TWA also supported an extension of the GIT fare to Africa which should effectively open up this large potential market on a new low fare basis.

Inasmuch as the CAB is in the process of conducting an investigation into the tour requirement features of various group and affinity fares on scheduled as well as supplemental carriers, TWA believes the action taken at Cannes-Dallas represents a positive effort on the part of IATA to "self-police" the industry.

Supporting economic data is included in Exhibit IV:

Trans World Airlines, Inc.

Estimated Revenue Change

Group Inclusive Tour

Evaluation of Control Adjustments and Fare Increases

(1970)

<u>ESTIMATED TWA - 1970</u> <sup>1/</sup>	<u>PASSENGERS</u>	<u>REVENUE GAIN (LOSS) (MILLIONS)</u>
\$10 - \$5 Fare Increase	26,700	\$ 0.3
Total Revenue Change		<u>\$ 0.3</u>

<sup>1/</sup> A further improvement in the overall revenue picture can be expected due to the increased stopover, minimum tour price, layover expenses, etc. controls on the GIT which should result in upgrading to the 14/21 Day and Individual Inclusive Tour Fares. Preliminary estimates include 10,700 such upgrades resulting in revenue improvement of \$1.0 million.



North Atlantic Affinity Group FaresSummary:

Existing Affinity Group Fares were revalidated for the summer of 1969 and amended to reflect significant reductions beginning with the winter 1969-1970 season.

There has been a significant decrease in affinity group travel on scheduled services due to the diversion of such traffic on an increasing basis to the supplemental carriers. To a large degree the liberalization of CAB regulations relating to affinity group travel in charter services has created a new level of price competition in 1968 for the North Atlantic IATA members. The main source of this competition has evolved from an increasingly large group of supplemental carriers. These carriers have been permitted to market traffic under so-called affinity groups and regulations which involve limited self-policing arrangements. As a result, they have gained a majority of the market for affinity group travel. On the other hand, IATA has maintained certain restrictions in the recognition and promotion of affinity groups which limit the amount of general public travel that may be diverted to such group travel. The competitive aspects of these developments is of serious concern to the IATA North Atlantic carriers and particularly to TWA. The impact on certain competitive markets has been of such a degree that, for example, fully 50% of the total peak season market from the U.S. West Coast to Europe has been transported by the supplemental carriers and other charter operators under the identity of pro rata affinity group charter transportation.

TWA firmly believes that there is a substantial market for the transportation of affinity groups in scheduled service with the shoulder and off-season periods susceptible to promotion and development at lower levels of affinity group fares. Increases in this form of traffic will assist in improving the seasonal and directional imbalance in traffic which continues to challenge the efforts of the North Atlantic members. As a result, the revised affinity group fares provide for three separate and distinct seasonal fare levels. TWA views this three-tier group fare structure as an improvement in the marketing technique of the industry which may encourage a balancing of vacation periods for the public with an improvement in the seasonal imbalances in traffic.

Supporting economic data is included in Exhibit V:

## TRANS WORLD AIRLINES, INC.

COMPARISON OF IATA APPROVED AFFINITY FARES

(New York - London)

	<u>Present Fares</u>		<u>New Fares<sup>1/</sup></u>		<u>Reduction</u>	
	<u>25 Psgrs<sup>1/</sup></u>	<u>50 Psgrs</u>	<u>40 Psgrs</u>	<u>50 Psgrs</u>	<u>Amount</u>	<u>Percent</u>
Jan	\$267	-	\$200	-	\$67	25.1%
Feb	267	-	200	-	67	25.1
Mar	267	-	200	-	67	25.1
Apr	300	\$245	212	-	33	14.5
May	300	245	212	-	33	14.5
Jun	300	245	-	\$250	(5)	(2.0)
Jul	300	245	-	250	(5)	(2.0)
Aug 1-9	300	245	-	250	(5)	(2.0)
Aug 10-31	300	245	212	-	33	14.5
Sep	300	245	212	-	33	14.5
Oct	300	245	212	-	33	14.5
Nov	267	-	200	-	67	25.1
Dec	267	-	200	-	67	25.1

<sup>1/</sup> 25 passenger affinity fare remains in effect (including free stopovers). New 40/50 passenger fares do not permit stopovers.

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Trans World Airlines, Inc.

Estimated Revenue Change

Bulk Affinity Group-50 Fare

(1970)

<u>ESTIMATED TWA - 1970</u>	<u>PASSENGERS</u>	<u>REVENUE GAIN (LOSS) (MILLIONS)</u>
Diversion from all Charter Services (2.5%)	2,800	\$0.6
Diversion/Dilution from Normal Affinity Group Fare (50%)	17,100	(1.1)
Generation	2,000	0.5
Traffic Retention <u>1/</u>	7,800	<u>2.6</u>
Total Revenue Gain		<u>\$2.6</u>

1/ TWA estimates these passengers would otherwise have been diverted to charter competition - therefore, this figure represents a relative savings to TWA.

North Atlantic Incentive GroupSummary:

Following consistently from our previous comments on seasonal imbalances, TWA was successful in gaining acceptance for a new Incentive Group Fare slated for November 1, 1969 effectiveness. This fare has been accepted for shoulder and off-peak periods only. In addition, it is believed the introduction of this fare with groups of 40 EB and 20 WB should also improve the imbalance in directional traffic; (concurrently improving the U.S. balance of payments) particularly in view of the fact that European companies and dealers are beginning to show an interest in motivational travel programs.

TWA expects 1970 will bring a net increase of approximately 3000 additional passengers using this new fare. Following this estimate, TWA's increase in revenue would be \$0.7 million.

North Atlantic Contract Bulk-Inclusive Tour RulesSummary:

An entirely new concept of Contract Bulk Inclusive Tour Prices has been adopted for November 1, 1969 implementation. TWA fully supports the concept of larger group movements at reduced price levels as a new marketing tool to promote travel to Europe during TWA's expansion phase with the introduction of large capacity aircraft as well as a means for competing with the flexibility and selective authority of supplemental carriers. In addition, the price structure has been constructed in a manner which should aid the seasonal and directional imbalances; namely, introduction of lower shoulder and off-peak prices coupled with seat blocks of 40 Eastbound and 20 Westbound.

During 1967 and 1968 the scheduled carrier industry was confronted with new price competition from supplemental carriers in selected high density, popular North Atlantic markets. Their performance during these years shows a rapid gain to a point where they now control 50% of the West Coast-Europe market. And recently, additional avenues have been granted to the supplementals in the form of inclusive tour charter authority.

Against this background of increased competition in a selective market area, and on the basis that IATA knows of no principal of law or policy which would even suggest that one carrier cannot meet the competition offered through the fares of another, the Bulk Inclusive Tour Rules were established to meet this competition. In addition, these new rules do represent sizeable reductions and should fill out the picture for the round trip discounts' "compensating adjustments".

While the new rules represent a sizeable reduction in seat prices, TWA believes these rules will stand on their own economically as an additional promotional fare within the North Atlantic structure. Exhibit VII clearly illustrates a 1970 revenue potential of \$2.3 million. Yet already the supplemental carriers have suggested this will not be an economic fare. TWA has always supported only economically sound "promotional" fares. At the same time, TWA must always stand ready to reassess its market position as new competitive forces appear, and this position has been invoked in part with the Bulk Inclusive Tour Prices.

The CAB should approve this agreement because the interests of the public are at stake. IATA carriers have studied the group travel market carefully and completely, and have determined that a market demand exists for scheduled service bulk travel. And built into this agreement, scheduled carriers have established effective tour requirements in order to safeguard the interests of the public. Experience with the GIT has proven that a meaningful and productive tour costs approximately \$7 per day (including commissions); hence the requirement for a \$100 tour plus \$7 per day in excess of 14 days. In addition, the rules have been tailored to remain compatible with rail/bus/air tours; hence the travel together requirements and limited stopover rules. All of these effective controls serve to make the new low prices an economic and viable marketing tool and must be analyzed as the prime reason for lower fares.

Consequently, TWA strongly supports the Contract Bulk Inclusive Tour Concept as an innovative means to promote additional scheduled travel to Europe. In the next few years, IATA airlines have chosen to modernize their jet fleets in order to keep up with anticipated market demands. Large capacity aircraft will be introduced during the coming fare agreement period and, at the outset, TWA as well as other IATA carriers will face a capacity crisis unless scheduled international travel is given a boost (See Exhibit VII - Page 2). The new Contract Bulk Concept is intended to aid immeasurably in providing this incentive.

Fully ten weeks of the IATA negotiations dealt directly or indirectly with charter competition and the new bulk prices. European carriers whose schedule considerations are limited to narrowly defined geographical areas effectively made the point that they are fighting for survival next to U.S. supplemental competitors who have stable outside financial interests to draw upon and who operate under considerably less stringent rules than do IATA carriers. At the same time, U.S. Flag carriers who provide frequent service to popular as well as underdeveloped markets are also now facing a possible squeeze-out by supplemental competition on selected, high potential routes only. Therefore, the North Atlantic operators in unanimity have sought a means to answer this selective competition as best they could and still operate under a viable, economic fare structure. TWA believes this has been accomplished in part by the Bulk prices and urges the CAB to approve the new concept in the spirit of competition and as a genuine reduced tour fare for the traveling public.

Outlined in Exhibit VII are basic economic support data, new fare variances as a result of the Bulk prices, as well as estimated capacity figures for the next few years:

## Trans World Airlines, Inc.

## Estimated Revenue Change

Bulk Inclusive Tour Prices

(1970)

<u>ESTIMATED TWA - 1970</u>	<u>PASSENGERS</u>	<u>REVENUE GAIN (LOSS) (MILLIONS)</u>
Diversion from Charter (4.7%)		
1. Total charter diversion to TWA	5,400	\$1.1
2. TWA self diversion	300	(0.1)
Downgrading/Dilution <u>1/</u>		
1. Excursion (5.2%)	6,100	(0.6)
2. ITX (16.3%)	2,200	(0.1)
3. GIT (46.7%)	33,000	(0.2)
Generation	2,400	0.5
Traffic Retention <u>2/</u>	7,200	<u>1.7</u>
Total Revenue Gain		\$2.3

1/ Revenue loss was computed after correction for sales commission and differences in absorption expense.

2/ TWA estimates these passengers would otherwise have been diverted to charter competition - therefore this figure represents a relative savings to TWA.

Lowest Present Fares vs. New Bulk Fare  
New York and Los Angeles to London

<u>IATA CARRIERS</u>	<u>New York-London</u>			<u>Los Angeles-London</u>		
	<u>OFF PEAK</u>	<u>SHOULDER</u>	<u>PEAK</u>	<u>OFF PEAK</u>	<u>SHOULDER</u>	<u>PEAK</u>
Present Fares <u>1/</u>	\$207	\$207	\$228	\$397	\$397	\$424
Bulk Fare	<u>175</u>	<u>190</u>	<u>220</u>	<u>305</u>	<u>320</u>	<u>350</u>
Variance	\$ 32	\$ 17	\$ 8	\$ 92	\$ 77	\$ 74

1/ GIT Fare less 10% commission. (\$207/\$397)  
 Affinity Group-50 Fare less 7% commission. (\$228/\$424)  
 Affinity Fares restricted on weekends during peak periods.



EXHIBIT VII  
(Page 2)

Trans World Airlines, Inc.

Estimated IATA Transatlantic Capacity  
TWA Percentage of that Capacity

(1968-1973)

<u>Year</u>	<u>Total IATA</u> (000)	<u>TWA %</u>	<u>IATA</u> <u>Percent Increase</u>	
			<u>Year to Year</u>	<u>Over 1968</u>
1968	8,623	19.7%	12.9%	- %
1969	9,905	20.4	14.9	14.9
1970	13,100	20.7	32.2	51.9
1971	16,200	20.4	23.7	87.9
1972	17,600	20.5	8.6	104.1
1973	18,800	20.8	6.8	118.0

North Atlantic Family FaresSummary:

Existing (directional) Family Fares were revalidated for the period of the two-year agreement. Although significant pressure was mounted against these fares on behalf of specific European countries, the U.S. Flag carriers were successful in maintaining these fares for the purpose of improving directional imbalances and thereby the U.S. balance of payments situation. Although the fare is relatively new within the North Atlantic fare structure, additional data, shown below, indicates the result of increased promotion and useage.

Transatlantic Family Plan  
Traffic Experience to Date

(1968)

<u>1968</u>	<u>1st Class</u>		<u>Economy</u>		<u>Total</u>	<u>% of Total Commercial Traffic</u>
	<u>EB</u>	<u>WB</u>	<u>EB</u>	<u>WB</u>		
April	4	2	0	43	49	.1
May	121	456	158	460	1,195	1.8
June	81	135	442	1,354	2,012	2.0
July	69	96	608	1,360	2,133	1.9
August	122	124	1,289	1,017	2,552	2.2
September	88	116	1,101	571	1,876	1.8
October	130	111	621	665	1,527	2.1
November	71	67	399	333	870	2.0
December	<u>73</u>	<u>105</u>	<u>411</u>	<u>746</u>	<u>1,335</u>	3.0
TOTAL	759	1,212	5,029	6,549	13,549	

March 13, 1969

The Honorable John H. Crooker, Jr.  
Chairman  
Civil Aeronautics Board  
1225 Connecticut Avenue, N.W.  
Washington, D. C. 20020

Dear Mr. Crooker:

In accordance with the schedule established by the Board in Order No. 67-3-1 dated March 3, 1969 relating to the IATA Dallas fare agreements, I am enclosing herewith Pan American's economic analysis and justification in support of these agreements.

Sincerely,

Norman P. Blake  
Senior Vice President,  
Traffic & Sales

cc: Mr. Irving Roth

Economic Justification to CAB in Support of Dallas  
Fares Agreements

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The Board in Order 69-3-1 dated March 3, 1969 established a schedule for the receipt of comments relating to agreements adopted by Joint Conferences 1-2 and 1-2-3 of IATA meetings held in Dallas in January 1969, which are intended to become effective May 1, 1969.

Pan American urges that the Board approve these agreements and in support thereof submits the following justification.

These agreements are the result of almost three months of negotiations, the longest and most intense in the history of IATA meetings, in order to achieve unanimous agreement on the part of 25 North and Mid-Atlantic operators and 61 other carriers having voting rights on these agreements. The difficulties of these negotiations can be summarized as follows:

- (a) concern on the part of all carriers at the present cost/yield relationship and inadequate return on investment;
- (b) the need to generate substantial volumes of new traffic in order to fill the capacity which will be available during the period of this fares agreement, particularly the second half of the agreement when the Boeing 747 will be in service;
- (c) as a consequence of this capacity, the need to retain the greatest possible volume of traffic on scheduled services.

Obviously, these three aims tend to conflict at a certain point which is the reason unanimous agreement was difficult to obtain. Nevertheless, it is our view that the final agreement does, in the over-all sense, result in a sensible approach to all of these problems.

The agreement is comprised of the following major elements: (For ease of reference, a tabulation showing the present and proposed fares, together with key conditions applicable, based on the New York-London sector, is at Attachment "A").

Effective May 1, 1969

Amendments to individual excursion fares and individual inclusive tour fares which will eliminate all previous "blackout" periods, i.e., travel will now be permitted on Fridays, Saturdays and Sundays throughout the year and during certain summer peak periods at a slightly higher fare level.

The amendments will make these individual fares available to the public on approximately 200 days of the year where they are presently restricted, at fare levels significantly below those presently applicable for travel on such days; e.g., an individual 14/21-day excursion fare will now be available for travel commencing June 9-July 3 at \$350 New York-London round trip as compared to the previously existing normal economy fare at this time of \$484.50. In a similar manner, the facility to travel at weekends, for a \$30 surcharge in each direction, will result in lower available fares by as much as 32% in comparison to the otherwise available normal fare.

From the same date, the 5% round trip discount presently existing for normal fares will be eliminated.

Effective November 1, 1969

Bulk inclusive tour fares will be introduced, applicable to groups of not less than 40 eastbound or 20 westbound. At the same time, substantial reductions will be afforded for groups of passengers holding "Affinity".

The bulk inclusive tour fares represent a new concept in marketing of airline seats on scheduled services. These have been established at prices which will enable tour operators to establish bona fide all-expense inclusive tours for a package price significantly below that which exists today. For example, a tour package involving a turn-around point of Rome could be produced for as little as \$320 during a five-month winter period, or \$340 throughout most of the remainder of the year, compared to the existing GIT tour price minimum of \$400.

The level of prices involved requires that the carriers establish conditions which will prevent wholesale abuse and diversion; therefore, it has been necessary to establish requirements for advance deposits three months before departure and full payment one month before departure. The experience of all carriers under existing group inclusive tour fares, for example, has been such as to demonstrate that without these safeguards fare levels such as those proposed cannot be economically sustained. Equally, the fact that a sale of a block of seats has been guaranteed, substantially in advance of departure thus avoiding the normal wastage of seats, improves the utilization of availability capacity for the carriers.

The changes in the "Affinity" group fares will also represent substantial reductions to the public. In addition to retaining all of the existing group fares for groups of 25 passengers eastbound and 15 westbound, there will be introduced lower fares for a large part of the year for larger sized groups, minimum size 50 during a ten-week period eastbound and three months westbound, and 40 passengers during the remainder of the year.

During a five-month winter period, affinity groups will be able to travel New York-London round trip at \$200 and for approximately a further five months of the year for \$212, representing reductions of 30% and 25%, respectively, from affinity fares presently available during these times.

The objectives of these reductions is threefold;

- (1) To stimulate more group travel.
- (2) To attempt to spread existing group traffic throughout the year. At present, Pan American's Affinity group traffic is almost entirely condensed into three months eastbound (June, July, August) and four months westbound (June, July, August, September).
- (3) To retain as much as possible of the Affinity group traffic on scheduled services. As will be seen from Attachment "F", during the year 1968 IATA Members carried approximately 200,000 passengers in each direction on Affinity charters to/from the U.S.A., a substantial amount of this total during periods of the year when large numbers of scheduled seats were empty.

These Affinity group fares will also apply to "Incentive Groups", except during the peak fare period and on a restricted validity basis. ("Incentive Group" means groups of employees and/or dealers and/or agents of the same business firm/corporation travelling under an established Incentive Travel Program.) Such groups have generally been carried in the past by charter on transatlantic routes under the "Own Use" provisions of Resolution 045; however, the proposed fares do not go so far as to make all "own use" charters adaptable to scheduled service. We would like to point out that under IATA Resolution 088r (North and Central Pacific Group Travel Fares) there has existed for many years the authority to carry "own use" groups at Affinity group fares, which incorporates "Incentive Groups".

Effective April 1, 1970

In respect to existing Group inclusive tour fares, for 15 passengers, there will be a small increase in the fare level and the adoption of more specific tour requirements. At the same time, this fare will be extended to include the African Continent at fare levels generally \$100 below existing individual I.T. fares.

The over-all agreement represents, in our view, a total fares package which clearly is in the public interest. While it includes an element of fare increase, it is in large measure offset by the substantial decreases in fares which will be made available to significant numbers of the travelling public.

The new bulk I.T. fares and lower Affinity and Incentive fares are in a range between individual promotional fares and pro-rata prices applicable to plane-load charters. In the unique North Atlantic market, such a large percentage of the traffic moves at individual promotional fares that these fares have become a "basic" fare in fact. Therefore, any relation of the new group fares on a percentage basis should be to the individual promotional fares, as well as to normal fares.

For example, the "shoulder" period Affinity fare of \$212 is approximately a 30% reduction from the individual excursion fare of \$300 New York-London. The bulk I.T. "shoulder" fare of \$190 amounts to \$211 if normal 10% commission is included, for a similar percentage reduction. The new fares are still substantially above the pro-rata charter fares of the supplemental carriers, which as explained later, range for some carriers in the area of \$131-\$138 round trip New York-London on a year round basis.

In the transatlantic market, with its high tourist component and definite seasonal and directional characteristics, promotional fares should not be judged by some standard that the Board may deem appropriate for domestic transportation and that is related only to the highest fare in the structure. The transatlantic market has an array of fares with each attracting varying percentages of traffic, and any test should be whether the over-all package is economic and in the public interest. This is especially true when the new group promotional fares are well within the range between individual fares and charter pro-rata prices.

Included in the two-year agreement are the continuation of various special features designed to attract more European visitors to the U.S.A., including the Transatlantic Family Fares and lower group size requirements for European-originating travel in connection with bulk I.T. fares and certain Affinity Group fares and "Incentive" fares. These factors should help in the development of European-originating traffic which would have a favorable impact upon the U.S. balance of payments.

The agreement also resolves the serious problem in respect to fare levels for Boeing 747 vs. existing jet aircraft by establishing equal fares. The nine abreast economy class seating agreed for the Boeing 747 will provide substantially greater comfort to economy passengers than anything previously existing.



We have estimated the effect of these fare changes upon Pan American's traffic and an analysis (Attachment "B") of this effect is attached to this letter. Briefly summarized, it amounts to the fact that the May 1, 1969 changes referred-to above, as applied to our actual 1968 traffic, would have resulted in an increase in the average economy class fare of 1.4% only, or an increase in economy class revenues of \$1.7 million. This has been calculated according to our best judgment of how the traffic would be redistributed on the basis of the new fares, and a full explanation of the assumptions which have been made is contained in the attachment hereto. This analysis assumes no additional traffic or additional capacity across the Atlantic.

The average yield per economy class passenger mile which would result we calculate to be 4.79 cents, and in comparison with what we understand to be a reported average yield per coach class mile for domestic trunk carriers, prior to the recent domestic fares increase, of approximately 5.2¢ the trans-atlantic yield in our view is reasonable.

The additional net revenues that would accrue as a result of the May 1, 1969 changes are fully justified in view of Atlantic sector results. Pan American's return on investment for its Atlantic sector in 1968 was 4.97%\*, and for the four-year period 1965 through 1968, 8.3%\*\* . The additional revenue referred-to above would in a full year have raised this return for 1968 only to 5.4%, which is substantially below the 10.5% found by the Board to be reasonable.

For the year 1970, the impact of the lower group fares to be introduced in November 1969 will result in a reduction in yield compared to 1968. It is our estimate that the effect of these lower fares would represent a reduction of approximately 2.2% in the average economy class fare against the adjusted 1968 figures. See Attachment "C". The increase in revenues, economy class, would amount to \$6.7 million - including the revenue from newly generated traffic and traffic diverted from charters. Thus, while the average price paid by the passenger will be reduced, the additional traffic that would be generated would increase Pan American revenues. It is estimated that this would have increased the rate of return on investment on the Atlantic sector to approximately 6% for 1968.

The analysis in Attachment "C" assumes that the November 1 part of the fare package would have generated 42,800 additional passengers above those carried by Pan American across the Atlantic in 1968. The analysis assumes that this generation would occur with the Bulk I.T. fare and it is expected that

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\* Excluding investment tax credits, on investment excluding equipment purchase funds.

\*\*Excluding special item related to the sale of Panagra, the return is 7.9%.

it would consist primarily of newly generated traffic. In addition, as the analysis explains, there would be diversion of Pan American's historic group I.T. and other traffic to the Bulk I.T. As to the supplemental carrier transatlantic traffic, their ITC traffic has been so small that no diversionary impact has been estimated. As to their pro-rata affinity traffic, the supplementals would still have a price advantage over the Bulk I.T., particularly in the peak season. This is also true with respect to the new group affinity fares, where the reductions will be applicable only in the shoulder and off-peak season. Thus, our analysis of the diversion to scheduled services has been estimated to be only from Pan American charter services, some 17,500 passengers.

Attachment "C" estimates approximately 71,000 annual passengers under the Bulk I.T. and 42,700 annual passengers under the group of 50/40 Affinity fares. Since Pan American's North Atlantic economy load factor in 1968 was only 53.5%, it is estimated that the 60,300 additional passengers referred to above could have been carried on existing services. It is estimated that this additional traffic would have increased the load factor to approximately 57.2%. For this reason, the analysis of increased revenues in Attachment "C" assumes that there would be no additional costs related to increased transatlantic capacity. Of course, in 1970 with B-747 in service, our capacity in 1970 will increase substantially over 1968, resulting in lower load factors.

It is our view that for the reasons stated above, supported by the attachments hereto, the Dallas fares agreement does, in large measure, balance the effects of the elimination of the round trip discount and we respectfully request that the Board will as quickly as possible signify their approval of these agreements in order that the marketing for the summer, fall and winter of 1969 should not be retarded.

In this connection, we have received a copy of a letter dated February 25, 1969 from the National Air Carrier Association which urges the Board to effect a postponement of the IATA effectiveness dates. This letter contains a number of sweeping statements which we believe should be answered now, without waiting for any formal complaint.

NACA states, "There should be an unusually careful investigation of a fare increase so plainly intended to subsidize the IATA carriers' concerted effort against the supplementals via the Bulk fares...".

That there is no "subsidy" involved is clear from the effect of the changes to individual fares alone, i.e., that the effect of the round trip discount elimination is largely balanced by the reductions made to individual promotional fares.

NACA states, "Although the IATA carriers stand ready and willing to undertake a concerted fare reduction in order to capture the ITC traffic of the supplementals...".

The volume of ITC traffic of the supplementals is presumably a matter of record, but it does not appear to be so significant as to warrant the IATA carriers attempting to "capture" it. The IATA carriers have shown, however, a willingness to undertake fare reductions in order to retain as far as possible for scheduled services the existing scheduled inclusive tour traffic and to generate new traffic.

NACA states, "Other low fares agreed upon for affinity groups of 40-50 or more, are, of course, directly aimed at the affinity charters of the supplementals."

The lower affinity fares are aimed at generating new group traffic and at diverting traffic to scheduled services from charters, not just supplemental charters but IATA charters as well. As we have stated herein, the IATA charter traffic is substantial, approximately 400,000 passengers in 1968.

As far as the over-all theme of the complaint, that the aim of the IATA fares is directed at the supplemental charters, we must point out that the fare levels involved in the IATA agreement do not approach the pro-rata seat prices which would result from presently filed charter tariff mileage rates of supplemental carriers, rates which apply not only to plane-load charters but also to split charters involving not more than three groups of at least 40 passengers.

For example:

Trans International Airlines, Inc. DC-8 (180 seats) rate of \$3.60 per statute mile would produce a New York-London round trip fare of \$138 on a pro-rata basis. The same carrier's DC-8-61 (250 seats) rate of \$4.75 per statute mile would produce a New York-London round trip fare of \$131 on a pro-rata basis.\* It should be noted that these mileage rates apply year round. Similar rates apply on other carriers. (See Attachment "D".)

The claim by NACA that the group fares appear to be unreasonably low both absolutely and in relation to the entire fare structure is without justification. The major effect of lower group fares is in the spring, fall and winter, when large volumes of seats traditionally are empty because of the highly seasonal characteristics of the North Atlantic market. We believe it is obvious that a substantial economic waste is involved in the operation of full plane-load charters by IATA carriers while at the same time their scheduled flights are flying with substantial empty seats. To the extent we can divert passengers from charter to scheduled services, which we estimate is probable up to 25% of our charter

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\*TIA Charter Tariff No. WN-1, Original Page 20-A effective September 12, 1968. (Attachment "E")

traffic during nine months of the year, we can eliminate extra expenses involved in operating charter aircraft and carry the additional traffic at relatively small extra cost in existing scheduled services.

Because of the volume of empty seats in the spring, fall and winter, we believe it is reasonable, also, that the lower group fares should be permitted in order to generate passengers for otherwise empty seats and, hopefully, divert a certain amount of traffic into these periods from the peak summer months. We believe this to be entirely consistent with the reasoning of the Board in Order No. E-18224 of April 16, 1962, its original finding that group of 25 affinity fares should be approved, in which it was stated:

"The economic health of the United States certificated transatlantic carriers is a matter of prime concern to the Board in the public interest. These carriers are required by their certificates of public convenience and necessity to perform regularly scheduled transportation for the general public in good years as well as bad, in the off season as well as the peak season..."

As far as the NACA contention that the group fares appear unduly discriminatory under the rule of equality, we believe the tabulation of fares (Attachment "A") shows clearly that there is a distinct difference in the value of service at each of the fares. The necessity to travel in groups of 50 or 40 makes the fares less attractive than normal economy fares, individual promotional fares, or group fares for smaller groups of 25 or 15.

Each of the new or lower group fares contains stopover restrictions, either total or permitting only a limited number, whereas individual fares or groups of 25 are permitted unlimited stopovers.

Each of the new or lower group fares has restrictions pertaining to advance deposits and payments, refunds, re-routing, etc. which do not apply to individual fares and, in the case of the Bulk I.T., are more stringent than for any previously existing fare.

The "Incentive" fares, while perhaps applying in some instances to persons who may not otherwise qualify under a true affinity test, nevertheless are restricted from applying during peak summer months, and have an extremely limited ticket validity, i.e., not less than five nor more than 14 days.

Finally, NACA states that, "The fare increase and Bulk fares are interconnected, the former scheduled to become effective May 1, 1969, and the latter not until November 1, 1969" and urges a postponement of the May 1 date.

One of the major reasons why the Bulk fares are due to be introduced at a later date than May 1 is the need for advance marketing time. The fact that IATA agreement was not reached until early February made it a practical impossibility to plan on these fares as an effective tool at any earlier date because of the requirements inherent in the fares, promotional literature, advance contracts, etc. No such problem exists with individual promotional fares.

In respect to the competition of supplemental carrier charters, we should point out that throughout the IATA negotiations several carriers took the position that the IATA carriers should amend Resolution 045 in order to permit inclusive tour charters, instead of providing lower fares on a scheduled basis. In the final analysis the majority view prevailed, i.e., that the long-term interests of the scheduled carriers and of the public undoubtedly would be harmed by such a change.

We believe that the U.S. scheduled carriers, particularly, would be harmed by such a change, but at the same time we believe that unless a reasonably competitive scheduled fare structure is permitted, there is little doubt that future demands for I.T. charters by IATA carriers will become much stronger. With the concern of the Board, as already noted, on the economic health of the scheduled industry, we believe that the public interest would best be served by proceeding in the direction of the fare agreement now before the Board.



**ATTACHMENT "A"**  
**NYC-100 FARES AND CONDITIONS EFFECTIVE MAY 1 AND NOV. 1, 1969**

Type of Fare	Present Fare Level	Proposed Fare Level	Effective Date	Period of Application	Stop-over Allowed	Transit/Travel Allowed	Min/Max Duration	Passengers Required	Affinity Required	Prior Application	Import/Export	Other Conditions
<b>1 First Class</b>	OV 375.00 RT 712.50	OV 375.00 RT 750.00	5/1/69	All Year	Yes	Yes	1 Year					
<b>2 Economy "Basic"</b>	OV 210.00 RT 399.00	OV 210.00 RT 420.00	5/1/69	Year round except (EB) May 22-Aug. 3 and (WB) Jul 17-Sep. 20.	Yes	Yes	1 Year					
<b>3 Economy "Peak"</b>	OV 255.00 RT 481.50	OV 255.00 RT 510.00	5/1/69	(EB) May 22-Aug. 3 (WB) Jul 17-Sep. 20	Yes	Yes	1 Year					
<b>4 21-Day Exc. "Basic"</b>	RT 300.00 (No Week ends)	RT 300.00	5/1/69	Year round except for travel originating: (WB) Jun 6-Jul 3 and Aug 4-Aug 21 (EB) Jun 2-Jun 19 & Aug 18-Sep 1.	Yes	Yes	Min 14 days Max 21 days					
<b>5 21-Day Exc. "Peak"</b>	RT 350.00	RT 350.00	5/1/69	In effect: (WB) Jun 9-Jul 16 and Aug 21 (EB) Jun 2-Jun 19 and Aug 18-Sep 4.	Yes	Yes	Min 14 days Max 21 days					
<b>6 21-Day I.T. "Basic"</b>	RT 210.00 (No Week ends)	RT 210.00	5/1/69	Same as 4a in 4 above.	Yes	Yes	Min 14 days Max 21 days					
<b>7 21-Day I.T. "Peak"</b>	RT 210.00 (No Week ends)	RT 210.00	5/1/69	Same as 6a in 6 above.	Yes	Yes	Min 14 days Max 21 days					
<b>8 G.I.T. "Basic"</b>	RT 210.00	RT 210.00	5/1/69	Same as 6a in 6 above.	Yes	Yes	Min 14 days Max 21 days					
<b>9 G.I.T. "Peak"</b>	RT 280.00	RT 280.00	5/1/69	Same as 6a in 6 above.	Yes	Yes	Min 14 days Max 21 days					
<b>10 G.I.T. "Basic"</b>	RT 210.00	RT 210.00	4/1/69	Year round except for "Peak" periods shown in (11) below.	Yes	Yes	Min 14 days Max 21 days					
<b>11 G.I.T. "Peak"</b>	RT 280.00	RT 280.00	4/1/69	(EB) Jun 5-Jul 5, Jul 31-Aug 23 (WB) May 29-Jun 21, Aug 14-Sep 6.	Yes	Yes	Min 14 days Max 21 days					
<b>12 Affinity Group</b>	RT 300.00 RT 267.00 RT 245.00 RT 275.00 RT 267.00	RT 300.00 RT 267.00 RT 245.00 RT 275.00 RT 267.00	4/1/69	(EB) Apr 1-Oct 31 (WB) Nov 1-Mar 31 (WB) Apr 1-Oct 31 (WB) Nov 1-Mar 31	Yes	Yes, except: EB-June/July WB-Aug/Sept.	1 Year Apr - Oct. 1 Year 1 Year	25 25 50 15 15	Yes	30 days 30 days 30 days 30 days	100-30 days prior	Full payment must be made 21 days prior
<b>13 Affinity Group</b>	RT 300.00 RT 267.00 RT 275.00 RT 267.00 RT 245.00 RT 212.00	RT 300.00 RT 267.00 RT 275.00 RT 267.00 RT 245.00 RT 212.00	11/1/69	(EB) Apr 1-Oct 31 (WB) Nov 1-Mar 31 (WB) Apr 1-Oct 31 (WB) Nov 1-Mar 31 (WB) Apr 1-May 31, Aug 10-Oct 31 (WB) Nov 1-Mar 31	Yes	Yes, except: EB-June/July WB-Aug/Sept	1 Year 1 Year 1 Year 1 Year 1 Year 1 Year	25 25 15 50 40 40 50 40 40	Yes	30 days 30 days 30 days 30 days 30 days 30 days	100-30 days prior	Full payment must be made 21 days prior
<b>14 Bulk I.T. Prices</b>	RT 200.00 RT 220.00 RT 190.00 RT 175.00 RT 220.00 RT 190.00 RT 175.00	RT 200.00 RT 220.00 RT 190.00 RT 175.00 RT 220.00 RT 190.00 RT 175.00	11/1/69	(EB) Jun 5-Jul 5, Jul 31-Aug 23 (WB) Apr 1-Jun 4, Jul 6-Jul 30, Aug 24-Oct 31 (WB) May 1-Dec 9, Dec 25-Jan 31 (WB) May 23-Jun 21, Aug 14-Sep 6 (WB) Apr 1-May 28, Jun 22-Aug 13, Sep 7-Oct 31, Dec 10-Dec 24 (WB) Nov 1-Dec 9, Dec 25-Mar 31	3 3 3 3 3	Yes Yes Yes Yes Yes	Min 14 days Max 21 days	40 40 40 20 20	No No No No No		100-30 days prior	Full payment must be made one month prior
<b>15 Incentive Group Fares</b>	RT 212.00 RT 200.00	RT 212.00 RT 200.00	11/1/69	(EB) Apr 1-May 31, Aug 10-Oct 31 (WB) Nov 1-Mar 31	No No	Yes Yes	Min 5 days	40 40	Only Corp. Emp. on file		100-30 days prior	Full payment

Pan American World Airways, Inc.  
 Estimated Effect of Fare Agreements Made at Dallas, to be Effective May 1, 1969  
 Upon Average Transatlantic Economy Fare (1) Experienced in 1968

	Average One Way Transatlantic Fare		Traffic Distribution			Average One Way Fare Weighted by Traffic		
	Pro-Forma (3)		Actual			Actual		
	Actual	Pro-Forma (3)	Reported	Adjusted (2)	Pro-Forma (4)	Reported	Adjusted (2)	Pro-Forma
Normal	\$198	\$206	60.7%	60.3%	53.3%	\$120.19	\$119.39	\$109.80
Family Plan	98	98	1.4	1.9	1.9	1.37	1.86	1.86
Excursion								
Basic-Midweek	141	141	27.3	27.2	27.2	38.49	38.35	38.35
Weekend		169			4.1			6.03
Peak-Midweek		165			1.3			2.14
Weekend		193			1.4			2.70
Total			27.3	27.2	34.0			
Individual I. T.								51
Basic-Midweek	124	124	.8	.8	.8	.99	.99	.99
Weekend		152			.1			.15
Peak-Midweek		147			.05			.07
Weekend		175			.05			.09
Total			.8	.8	1.00			
All Other Promotional	117	117	9.8	9.8	9.8	11.47	11.47	11.47
Total Commercial Economy			100.0	100.0	100.0	\$172.51	\$172.06	\$174.55
% Increase Pro-Forma Over Adjusted								1.4%

Average Yield Per Passenger Mile (5) 4.79¢



- (1) Excludes Category A and Z. Fares are net of dilution for prorates and children's discounts and represent amounts applicable to travel between the U.S. and transatlantic gateways.
- (2) Reported data adjusted to annualize family plan data, which was effective from April 24, 1968. The reported data is estimated to represent 75% of the adjusted annual family plan totals. Half of the additional family plan passengers are estimated to be newly generated with the remaining half diverted from normal fares.
- (3) Changes from actual estimated as follows:  
 Normal - at 104.2% of actual due to 5.26% increase from elimination of round trip discount weighted for ratio of one way passengers carried (20%);  
 Excursion and Individual I. T. - at ratio of proposed new fare levels to unchanged basic midweek fare.
- (4) Based on the assumption that opening up weekends and former blackout periods for excursion and individual I. T. passengers will divert 25% additional passengers for lack of these fare bases over actual experience for 1968 from normal fares. It is expected that of the additional excursion and individual I. T. passengers, 40% would move during former blackout periods, half during midweek and half on weekends, and the remainder on non-blackout weekends.
- (5) Based on average transatlantic haul of 3,642 miles.

Pan American World Airways, Inc.  
 Estimated Effect of Fare Proposals Made at Dallas (Effective 11/1/69)  
 Upon Average Transatlantic Economy Fare<sup>(1)</sup> Experienced in 1968

	Average One Way Transatlantic Fare		Traffic Distribution				Average One Way Fare Weighted by Traffic	
	Actual	Pro-Forma <sup>(3)</sup>	Actual		Pro-Forma <sup>(4)</sup>		Reported	Adjusted <sup>(2)</sup>
			Reported	Adjusted <sup>(2)</sup>	Reported	Adjusted <sup>(2)</sup>		
Normal	\$198	\$206	60.7%	60.3%	49.9%		\$120.19	\$119.39
Family Plan	98	98	1.4	1.9	1.8		1.37	1.86
Excursion								
Basic-Midweek	141	141	27.3	27.2	24.6		38.49	38.35
Weekend		169			3.7			
Peak -Midweek		165			1.25			
Weekend		193			1.25			
Total			27.3	27.2	30.8			
Individual I. T.								
Basic-Midweek	124	124	.8	.8	.7		.99	.99
Weekend		152			.1			
Peak -Midweek		147			.05			
Weekend		175			.05			
Total			.8	.8	.9			
Group I. T.								
Basic	109	113	3.8	3.8	1.8		4.14	4.14
Peak	132	136	.7	.7	.3		.92	.92
Total			4.5	4.5	2.1			
Affinity Groups								
Groups of 15 & 25	134	134	.9	.9	.8		1.21	1.21
Groups of 50 & 40/50								
Peak )	116	118	2.9	2.9	1.4		3.36	3.36
Shoulder)		100			2.7			
Off-Season		95			.5			
Total			3.8	3.8	5.4			

53

.87  
.15  
.07  
.09

2.03

1.07

1.65  
2.70  
.48

Pan American World Airways, Inc.  
 Estimated Effect of Fare Proposals Made at Dallas (Effective 11/1/69)  
 Upon Average Transatlantic Economy Fare (1) Experienced in 1968

Attachment "C"

Page

Average One Way Transatlantic Fare		Traffic Distribution		Average One Way Fare Weighted by Traffic	
Actual	Pro-Forma (3)	Actual Reported	Adjusted (2)	Actual Reported	Pro-Forma
Bulk L. T.					
Peak	\$104		1.2%		\$ 1.25
Shoulder	90		5.9		5.41
Off-Season	83		2.6		.50
Total	123	1.5	1.5	1.84	1.72
Military					
Total Commercial Economy		100.0	100.0	\$172.51	\$168.26
% Change Pro-Forma Over Adjusted					-2.2%
Average Yield Per Passenger Mile (5)					4.62¢

- (1) Excludes Category A and Z. Fares are net of dilution for prorates and children's discounts and represent amounts applicable to travel between the U.S. and transatlantic gateways.
- (2) Reported data adjusted to annualize family plan data, which was effective from April 24, 1968. The reported data is estimated to represent 75% of the adjusted annual family plan totals. Half of the additional family plan passengers are estimated to be newly generated with the remaining half diverted from normal fares.
- (3) Changes from actual estimated as follows:  
Normal - at 104.2% of actual due to 5.26% increase from elimination of round trip discount weighted for ratio of one way passengers carried (20%).  
Excursion and Individual I. T. - at ratio of proposed new fares to unchanged basic midweek fare.  
Group I. T. - actual increased by \$4 for weighted average diluted fare effect of one half of the proposed round trip fare increases of \$5 for Ireland, \$8 for the United Kingdom and \$10 for all other transatlantic points.  
Affinity Group - at ratio of proposed fares to previous fare.  
Bulk I. T. - diluted fares for this new fare base estimated based on pro-forma diluted affinity group fares at relative ratio of proposed fares.
- (4) (a) Opening up weekends and former blackout periods for excursion and individual I. T. passengers will divert 25% additional passengers for each of these fare bases over actual experience for 1968 from normal fares. It is expected that of the additional excursion and individual I. T. passengers 40% would move during former blackout periods, half during midweek and half on weekends, and the remainder on non-blackout weekends.  
(b) Lowering the affinity group fare and size for the former 50 or more during shoulder periods of the previous period of applicability and making a still lower fare available for the first time in the off-season is expected to divert 25% of Pan Am's charter passengers carried during these periods to this fare base while retaining passengers previously carried under this fare base despite the slight increase proposed for the peak period.  
(c) The availability of the new bulk I. T. fare is expected to generate passengers estimated at 5% of the total adjusted commercial economy class passengers and is expected to divert 50% of Pan Am's group I. T. passengers and 3% of the total pro-forma excursion passengers prior to the introduction of the bulk fares. The distribution of bulk I. T. passengers between seasons is expected to follow Pan Am's group I. T. experience.
- (5) Based on average transatlantic haul of 3,642 miles.

## TRANSMANCO SUPPLEMENTAL QUARTER RATES

Airline	Period of Validity		Aircraft	No. of Seats	Charges Per Mile		Territorial Application
	Eff. Date	Expiry Date			Live	Ferry	
CAPITOL			L-749		\$2.50	\$2.50	Between Points In Cont. U.S.A. and Points In Europe
			L-1049		2.75	2.75	
			DC-8-54	183	4.50	4.50	
			DC-8-55	183	4.50	4.50	
			DC-8-32	165	4.00	4.00	
			DC-8-61	250	6.00	6.00	
			DC-8-62	250	6.00	6.00	
ONA		5/15/69	DC-8-F		4.00	3.50	U.S. Originating
			DC-8-F		3.80	3.25	Europe "
SATURN	1/01/69	5/25/69	DC-8-61	180	4.00	3.50	U.S. Originating
			"	203	4.50	3.50	" "
			"	226	5.00	3.50	" "
			"	250	5.50	3.50	" "
	1/01/69	5/30/69	DC-8-61	180	3.98	3.50	Europe "
			"	203	4.28	3.50	" "
			"	226	4.64	3.50	" "
			"	250	5.00	3.50	" "
	-	5/31/69	DC-8-50	120	4.00	3.00	U.S. "
	6/01/69	7/13/69	"	"	6.00	3.00	" "
	7/14/69	8/27/69	"	"	4.90	3.00	" "
	8/18/69	9/22/69	"	"	3.80	3.00	" "
	9/23/69	5/31/70	"	"	4.00	3.00	" "
	-	5/31/69	"	"	3.80	3.00	Europe "
	6/01/69	7/13/69	"	"	4.00	3.00	" "
	7/14/69	8/27/69	"	"	4.50	3.00	" "
	8/18/69	9/22/69	"	"	4.00	3.00	" "
	9/23/69	5/31/70	"	"	3.80	3.00	" "
TIA	9/12/68	-	DC-8	145	3.19	3.00	Between Points In Cont. U.S.A. and Points In Europe
			"	165	3.47	3.00	
			"	180	3.60	3.00	
			DC-8-61	200	3.94	3.50	
			"	219	4.27	3.50	
			"	232	4.57	3.50	
			"	250	4.75	3.50	

TRANSATLANTIC SUPPLEMENTALS' CHARTER RATES

<u>Airline</u>	<u>Period of Validity</u>		<u>Aircraft</u>	<u>No. of Seats</u>	<u>From</u>	<u>To</u>	<u>Type Trip</u>	<u>Point to Point Charges</u>
	<u>Eff. Date</u>	<u>Expiry Date</u>						
CAPITOL		4/10/69	DC-8-F		NYC	LON	RT	\$35,750
		4/10/69	DC-8-31	165	NYC	LON	RT	26,400
			DC-8-61	250	NYC	LON	OW	17,236
			DC-8-61	219	NYC	LON	OW	15,453
			DC-8-F	180	NYC	LON	OW	13,386
			DC-8-F	165	NYC	LON	OW	12,256
	4/05/69	4/14/69	DC-8-54	183	BOS/NYC/ PHL/DCA	AGP*	RT	28,421
	4/06/69	-	DC-8-63	250	CHI	ATH	RT	61,750
ONA		9/30/68	DC-8-F		NYC	LON	RT	44,196
SATURN	3/20/69	-	DC-8-61	250	NYC	LON	OW	20,625
							RT	41,250
						PAR	OW	21,875
							RT	43,750
			DC-8-61	180	NYC	LON	OW	12,870
							RT	25,740
			DC-8-61	180	LON	NYC	OW	11,232

\* AGP = Malaga, Spain

**II SECTION 2 - TABLE 5-3**  
**(Continued)**  
**Rates and Charges in U.S. Dollars**

The rates and charges in this tariff apply to Standalone Charters as follows:

Subsidiary Points in the Continental United States

And Points in Europe

**PASSENGER TRANSPORTATION RATES PER STATUTE MILE (see NOTE below)**

EFFECTIVE	AND EXPIRES AT	AIRCRAFT DESIGNATION												
		Boeing 727				DC-8				DC-8-61				
		40 Seats	60 Seats	80 Seats	90 Seats	100 Seats	125 Seats	145 Seats	165 Seats	180 Seats	200 Seats	219 Seats	233 Seats	250 Seats
September 12, 1968	-	1.42	1.50	2.04	2.48	2.60	2.80	3.19	3.47	3.60	3.94	4.27	4.57	4.75

**PASSENGER FERRY RATES PER STATUTE MILE (see NOTE below)**

EFFECTIVE	AND EXPIRES AT	AIRCRAFT DESIGNATION												
		Boeing 727						DC-8			DC-8-51			
		40	60	80	90	100	125	145	165	180	200	219	233	250
		SEATS	SEATS	SEATS	SEATS	SEATS	SEATS	SEATS	SEATS	SEATS	SEATS	SEATS	SEATS	SEATS
SEPTEMBER 12, 1968		2.15	2.15	2.15	2.15	2.15	2.15	3.00	3.00	3.00	3.50	3.50	3.50	3.50

**PASSENGER LAYOVER CHARGES**

AIRCRAFT DESIGNATION	Charge per hour or fraction thereof	Maximum Charge per 24 hours or fraction thereof
DC-8	150.00	1,500.00
DC-8-61	180.00	1,800.00
B-727	130.00	1,300.00

**PASSENGER STOPOVER CHARGES**

AIRCRAFT DESIGNATION	Charge
DC-8	1,000.00
DC-8-61	2,000.00
B-727	500.00

\* - Time chartered aircraft is held on the ground at the request of the charterer.  
 NOTE: The rates and charges named on this page do not apply when aircraft charter between specified points are named in this tariff.

For explanation of abbreviations, reference marks and symbols, see the note printed hereon, see Page 3.

ISSUED: August 13, 1968

EFFECTIVE: September 12, 1968



1968 IATA Charter Activity  
Total Transatlantic to/from USA.

	<u>Number of Passengers</u>	
	<u>Eastbound</u>	<u>Westbound</u>
January	8,495	8,160
February	6,756	3,709
March	8,191	10,295
April	15,466	15,649
May	17,115	10,266
June	26,798	18,661
July	25,345	37,524
August	29,915	25,124
September	23,202	28,756
October	16,798	17,326
November	7,932	7,896
December	<u>11,243</u>	<u>11,108</u>
	227,171	194,474

UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD

SUBPENA

To.....International Air Transportation Association  
500 Fifth Avenue  
New York, New York.....

At the instance of the .....National Air Carrier Association, Attorney-in-fact for  
11 supplemental air carriers, 1625 Eye Street, N.W., Washington, D.C.  
you are hereby required to appear before .....

at the Civil Aeronautics Board, at Room 712 Universal Building, 1825 Connecticut Avenue, N.W.

in the city of .....Washington, D.C.

on the .....25th..... day of .....March....., 1969, at .....10:00 o'clock..... A.M. of  
in connection with  
that day, to-wit: in the Matter of .....Agreements adopted by Joint Conferences 1-2 and .....  
1-2-3 of the International Air Transport Association (IATA) relating to .....  
transatlantic fares, Order No. 69-3-1, Docket 20781, Agreement C.A.B. 20848

And you are hereby required to bring with you and produce at said time and place the following  
books, papers, documents, and records:

as set forth in the attached schedule

Fail not at your peril.

IN TESTIMONY WHEREOF, the undersigned, a member of the said Civil  
Aeronautics Board, or an officer designated by it, has hereunto set his hand

at .....Washington, D.C.

this .....17th..... day of .....March....., 1969

.....  
.....

UNITED STATES OF AMERICA  
Civil Aeronautics Board

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S U B P E N A

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Attached Schedule

1. All documents<sup>\*/</sup> relating in whole or in part to negotiations or deliberations of IATA or any of its committees, conferences or member carriers regarding the proposed elimination of the round-trip discount on normal North Atlantic fares (Resolution 150a), adoption of new or revised North Atlantic bulk and group fares (Resolutions 076e, 076m, 076p, 079a, 084a) and/or revision of North Atlantic excursion and individual inclusive tour fares (Resolutions 070d, 083a).

2. All documents relating in whole or in part to charter competition in the North Atlantic passenger market by U. S. and foreign supplemental carriers.

3. Documents which show in whole or in part the number of seats, seat-miles, passengers and passenger-miles flown, load factors and passenger yields in scheduled North Atlantic service by any IATA carrier, by direction and by class of service, for the period 1964 through 1968 by month.

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<sup>\*/</sup> As used herein, "documents" means all minutes, economic studies, financial studies, memoranda, reports, working papers, correspondence, summaries of oral communications and any other written communications (including but not limited to inter-carrier and intra-carrier communications, as well as communications between any carrier and IATA) for the period January 1, 1968 to date (unless other dates are specified).

4. Documents which show in whole or in part the number of passengers by carrier, by direction, moving in North Atlantic scheduled service at full fare and at each of the various promotional fares, for the period 1964 through 1968 by month.

5. Documents which show in whole or in part the number of North Atlantic passenger charters flown and charter passengers, by points of origin and destination, by IATA carrier, by month, for the period 1964 through 1968.

6. All documents relating in whole or in part to projections or estimates of passenger traffic to be carried by any IATA carrier under the new or revised North Atlantic excursion, individual inclusive tour, group and/or bulk fares.

7. Documents which show in whole or in part costs per revenue passenger miles on a fully allocated basis, by carrier, in North Atlantic scheduled service.

8. Documents which show in whole or in part add-on passenger unit costs per revenue passenger mile for calendar 1968 and/or any projected future period by carrier in North Atlantic scheduled service.

9. Documents which show in whole or in part carrier estimates as to when each of the various North Atlantic promotional fares must bear full cost allocation.

10. All documents relating in whole or in part to projected or estimated diversion of passenger traffic from charter flights by IATA and/or supplemental carriers as a result of the new or revised North Atlantic group and bulk fares.

11. All documents relating in whole or in part to projected or estimated self-diversion, dilution, or down-grading of passenger traffic carried by IATA carriers in North Atlantic scheduled service as a result of the new or revised North Atlantic group or bulk fares.

UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD

**SUBPENA**

To Pan American World Airways, Inc.  
Pan Am Building  
New York, New York 10017

At the instance of the National Air Carrier Association, Attorney-in-fact for  
11 supplemental air carriers, 1625 Eye Street, N.W., Washington, D.C.  
you are hereby required to appear before \_\_\_\_\_

~~at~~ the Civil Aeronautics Board, at Room 712 Universal Building, 1825 Connecticut  
Avenue, N.W.

in the city of Washington, D.C.

on the 24th day of March, 1969, at 10:00 o'clock A.M. of  
in connection with  
that day/~~to wit~~ in the Matter of Agreements adopted by Joint Conferences 1-2 and  
1-2-3 of the International Air Transport Association (IATA) relating to  
transatlantic fares, Order No. 69-3-1, Docket 20781, Agreement C.A.B. 20848

And you are hereby required to bring with you and produce at said time and place the following  
books, papers, documents, and records:

as set forth in the attached schedule

Fail not at your peril.

IN TESTIMONY WHEREOF, the undersigned, a member of the said Civil  
Aeronautics Board, or an officer designated by it, has hereunto set his hand

at Washington, D.C.

this 18th day of March, 1969

Thomas H. Wilson  
Chief Examiner

Form 800-207

UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD

SUBPENA

To Thomas K. Taylor, Vice President  
Trans World Airlines, Inc.  
1000 - 16th Street, N.W.  
Washington, D.C. 20036

At the instance of the National Air Carrier Association, Attorney-in-fact for  
11 supplemental air carriers, 1625 Eye Street, N.W., Washington, D.C.  
you are hereby required to appear before

the Civil Aeronautics Board, at 712 Universal Building, 1825 Connecticut Avenue, N.W.

in the city of Washington, D.C.

on the 26th day of March, 1969, at 10:00 o'clock A.M. of  
in connection with

that day/term in the Matter of Agreements adopted by Joint Conferences 1-2 and

1-2-3 of the International Air Transport Association (IATA) relating to

transatlantic fares, Order No. 69-3-1, Docket 20781, Agreement C.A.B. 20848

And you are hereby required to bring with you and produce at said time and place the following  
books, papers, documents, and records:

as set forth in the attached schedule

Fail not at your peril.

IN TESTIMONY WHEREOF, the undersigned, a member of the said Civil  
Aeronautics Board, or an officer designated by it, has hereunto set his hand

at Washington, D.C.

this 18th day of March, 1969

Thomas K. Taylor  
Chief Examiner

BEFORE THE  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D.C.

----- Agreements adopted by Joint Conferences : 1-2 and 1-2-3 of the International Air : Transport Association (IATA) relating to : transatlantic fares : ) : -----	Docket 20781 Agreement C.A.B. 20848
---	--

MOTION OF MEMBER CARRIERS OF THE  
NATIONAL AIR CARRIER ASSOCIATION TO  
SUSPEND PROCEDURAL SCHEDULE

The undersigned supplemental air carriers, represented by the National Air Carrier Association (NACA) as their attorney-in-fact, hereby move the Board to suspend the procedural schedule set by the Board in Order 69-3-1, March 3, 1969, until such time as the IATA carriers supply in fact "[f]ull documentation and economic justification" for the challenged North Atlantic fares or until they have complied with the terms of subpoenas duces tecum for which we are applying contemporaneously herewith. Alternatively, the Board should order a full evidentiary investigation, as requested in NACA's petition for reconsideration of Order 69-3-1, filed March 7, 1969.

In support of this motion, the NACA carriers state as follows:

I.

In our letter of February 25, 1969, and petition for reconsideration of March 7, 1969, we expressed our deep concern that the Board would act upon the instant fare agreements without having before it the kind of full factual record needed in order to make an independent public interest deter-



mination under Section 412(b). With the filing on March 13, 1969 of purported "justifications" by Pan American and TWA, it is now even more apparent that our concern is well-founded. The materials submitted by Pan American and TWA are not in any realistic sense "[f]ull documentation and economic justification from the carriers." (Order 69-3-1, p. 2.) The IATA carriers have made clear, we believe, that they do not intend to cooperate with the Board's efforts "to insure a full record" in this proceeding (*ibid.*). We submit that unless the Board takes prompt action to achieve its stated goal it will find itself confronted with a record largely devoid of essential facts and economic data in the possession of the IATA carriers.

## II.

The glaring deficiencies in the "justifications" submitted by Pan American and TWA are apparent to anyone familiar with the character of evidence regularly prepared in connection with fare investigations conducted by the Board. One can compare, for example, the voluminous and comprehensive data submitted by proponent carriers in the current youth fare investigation (Docket 18936) or the direct exhibits submitted a few days ago by Pan American and TWA in the GIT fares to Hawaii case (Docket 20580). In other words, the carriers, in far less complex cases, customarily submit far more comprehensive and substantial economic justification than that offered here. The short of it is that Pan American and TWA wouldn't think of trying to get by with this kind of cursory "justification" in any case where sponsoring witnesses would undergo cross-examination.

Pan American appears to recognize the inadequacy of the proffered justification, for it argues that North Atlantic promotional fares "should not be judged by some standard that the Board may deem appropriate for domestic transportation" and further that "any test should be whether the over-all package is economic and in the public interest" (p. 4; emphasis added). We emphatically reject this view. Section 1002(f) of the Act forbids any unjustly discriminatory fare in foreign air transportation. (See also §404(b).) And we submit that Section 412(b), in requiring a public interest determination by the Board in matters of this kind, does not contemplate a once-over-lightly examination of the "over-all package" but rather close scrutiny of the reasonableness, discriminatory character vel non and competitive impact of each individual fare in issue, as well as the entire fare package.

Some of the more obvious deficiencies in the materials submitted by Pan American and TWA are as follows:

1. Although the issue whether the group and bulk fares are unreasonably low is central to any public interest determination, the carriers failed to submit any evidence of their estimated costs, either on a fully-allocated or added-cost basis. It is difficult to believe that each of the carriers - not to mention the IATA cost committee - did not make detailed cost studies before approving the group and bulk fares. In lieu of such cost studies, Pan American has elected to submit two paragraphs of written argument (pp. 7-8) in support of the reasonableness of the group fares.

2. The carriers imply that no additional service will be required to carry the traffic generated by the bulk and group fares. But they have not

supplied the kind of detailed traffic projections and load factor data which would enable the Board to make an independent determination.

3. Although the Board called for "full documentation," Pan American and TWA have failed to make available substantial information concerning the competitive goals vis-a-vis the supplemental carriers which motivated adoption of the bulk and group fares and the expected impact of those fares upon the supplementals. TWA, on the one hand, says that "[f]ully ten weeks of the IATA negotiations dealt directly or indirectly with charter competition and the new bulk prices" (Attachment VII, p. 2); and it refers repeatedly and at length to the supplementals' competition as justification for the new fares. Pan American, on the other hand, appears to argue that the fares will divert traffic from IATA charters but not supplemental charters (pp. 7-8). We submit that "full documentation" requires that the minutes of the "fully ten weeks" of discussions, to which TWA refers, be made available to the supplementals, along with any studies by the carriers of estimated diversion from charter flights. <sup>1/</sup>

4. Although both Pan American and TWA appear to argue that the extension of excursion fares into blackout periods is justification for elimination of the round-trip discount on normal fares, TWA indicates that it expects to derive over \$660,000 in added revenues from the change - in addition to \$5.4 million in added revenues resulting from elimination of the round-trip

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<sup>1/</sup> If copies of the minutes have been filed with the Board (see TWA letter, p. 1), then we request that the Board immediately place them in its public file.

discount. It is evident that the carriers - and certainly Pan American - have failed to submit complete information in this regard.

5. The carriers have failed to provide any information with respect to their estimates of when the various North Atlantic promotional fares must bear full cost allocation. Such information is directly pertinent to a determination of their reasonableness. In this regard, we note Pan American's statement that "such a large percentage of [North Atlantic] traffic moves at individual promotional fares that these fares have become a 'basic' fare in fact" (p. 4).

The carriers' failure to submit "[f]ull documentation and economic justification" cannot be attributed to the tight procedural schedule set by the Board. The documents and economic data in question were almost certainly prepared prior to, or in the course of, the IATA conferences and are readily available to the carriers. <sup>2/</sup>

### III.

In an effort to reach some of the relevant and undisclosed documents and materials in the possession of Pan American, TWA and IATA, the NACA carriers are today requesting the issuance by the Board of subpoenas calling for the production of such documents or materials. <sup>3/</sup> There is clear precedent for the issuance of such subpoenas in a proceeding of this nature. IATA Group Fares Agreement, 36 C.A.B. 33, 34, 38 (1962); see

<sup>2/</sup> We assume that the carriers have not withheld relevant documents and data at this time in order to submit them with their April 7th answers to complaints - a procedure which would preclude any reply by the supplementals.

<sup>3/</sup> A copy of one of the subpoenas is attached as Exhibit A hereto. The subpoenas provide for a return date of March 24, 1969.

5 U.S.C. §555(d). Section 1004(b) of the Act, Rule 19 of the Board's Rules of Practice. Absent compliance with such subpoenas, or new action by the Board to compel the submission of additional and comprehensive data, it is evident that the supplementals will lack essential information in the possession of IATA and its carriers needed in order to develop the "full record" desired by the Board.

If this proceeding is indeed to be decided on a "full record," the supplementals must have access to relevant and as yet undisclosed materials and information in framing their complaint and objections, now due on March 27. This will not be the case unless the Board suspends its present procedural schedule pending receipt of these materials by the supplementals.

#### CONCLUSION

For all of the foregoing reasons, the Board should suspend the procedural schedule set by Order 69-3-1 so that complaints and objections to the fare agreements are not due until 14 days after the IATA carriers have either supplied in fact the "[f]ull documentation and economic justification" called for by that order or have complied with the subpoenas duces tecum being applied for by NACA carriers. Alternatively, the Board should institute a full evidentiary investigation of the challenged fare agreements - as it has recently done with respect to IATA agreements covering North Atlantic cargo rates (Order 69-3-47, March 13, 1969).

We further request that the Board shorten the time for filing answers to this motion (see Rule 12(c) of the Board's Rules of Practice), in order to

permit Board action upon this motion prior to the March 27th filing date for complaints and objections.

Respectfully submitted,

AMERICAN FLYERS AIRLINE CORPORATION  
CAPITOL INTERNATIONAL AIRWAYS, INC.  
MODERN AIR TRANSPORT, INC.  
OVERSEAS NATIONAL AIRWAYS, INC.  
PURDUE AIRLINES, INC.  
SATURN AIRWAYS, INC.  
SOUTHERN AIR TRANSPORT, INC.  
STANDARD AIRWAYS, INC.  
TRANS INTERNATIONAL AIRLINES, INC.  
UNIVERSAL AIRLINES, INC.  
WORLD AIRWAYS, INC.

By: 

Robert M. Lichtman  
1110 O.F.C. Building  
1730 Rhode Island Avenue, N.W.  
Washington, D. C. 20036

March 18, 1969

Counsel for the National Air Carrier  
Association

BEFORE THE  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D. C. 20428

----- x  
 Agreements adopted by Joint Conferences : Docket 20781  
 1-2 and 1-2-3 of the International Air Agreement C.A.B. 20848  
 Transport Association (IATA) relating :  
 to transatlantic fares :  
 ----- x

MOTION OF PAN AMERICAN WORLD AIRWAYS, INC.  
TO QUASH IN PART

The National Air Carrier Association (NACA) has filed an application for issuance of subpoenas for documentary evidence to Pan American World Airways, Inc. (Pan American) and certain other parties. The subpoena of NACA, signed by the Chief Examiner on March 18, 1969, was served by mail upon Pan American and was received at Pan American's office in New York on Thursday afternoon, March 20, 1969.

Pan American hereby submits this motion to quash the subpoena in part and in support thereof states as follows:

1. At the outset we wish to state our vigorous disagreement with the basic premise that NACA has advanced for the issuance of the subpoena. Thus, NACA



alleges its belief that the submissions of Pan American and TWA filed March 13, 1969 "do not comply with the Board's request and fail to include essential, factual and economic information needed by the Board in order to determine whether the IATA fare resolutions are consistent with or adverse to the public interest standard of Section 412 of the Federal Aviation Act." Pan American strongly denies this allegation and submits that its documentation and justification submitted earlier fully complies with the Board's request and does demonstrate that the proposed IATA fare agreement is consistent with the public interest standard of Section 412(b).

2. Based upon the above, Pan American would in normal circumstances resist the NACA request and take the position that the record before the Board is adequate for the Board's decision. However, there are great public interest considerations involved here and Pan American wishes at all cost to avoid any procedural wrangle that could possibly delay the approval of the Board of the IATA North Atlantic agreement by May 1, 1969. Therefore, while reserving our position that compliance with the Board's request has been attained, Pan American has undertaken a review of materials in its possession so as to make available any additional matter that might be relevant to this inquiry. Thus, we are submitting certain documents to the Board, along with reference to other voluminous documents of IATA which are either in the Board's hands or are being furnished by other parties.

3. The subpoena, as framed, is unduly broad and sweeping and goes far beyond anything within reason. It is basically a request for information which, if presented at a Prehearing Conference in a rate investigation, would be summarily denied by the Examiner as unduly broad and burdensome. In this regard, compare the rulings of Examiner Johnson in the Group Inclusive Tour Basing Fares to Hawaii, Docket 20580, in which many of the requests of NACA, similar to those framed in its subpoena here, were denied. The NACA request is so broad that it would take a review of virtually every piece of paper within Pan American's company files to assure exact compliance. This is far beyond reason and we ask that the subpoena be quashed insofar as it seeks this type of review.

4. As explained above, in order that there be no delay in the processing of this proceeding, Pan American has undertaken review of certain of its files to determine what matters might be relevant. In the limited time available, this review has necessarily been limited to the files and personnel directly related to the IATA North Atlantic fare agreement. We have not undertaken a review of files involving charter authorizations, matters concerning charter competition that do not involve rates or the specific fare resolution under review, recent legislation for supplemental carriers, pending charter authorization cases before the Board, etc. The only exception to this would be if certain of the above were utilized and referred to

during the direct consideration of the IATA fare agreement.

5. In summary, Pan American has undertaken a search of the relevant files pertaining to the IATA fare agreement in order to provide a good faith response to the NACA subpoena. To the extent NACA is requesting that Pan American go further, i.e., beyond the files directly related to the IATA North Atlantic fare agreement, it is respectfully requested that the subpoena be quashed. To require this would be an undue burden and would involve review of materials that would be only of very doubtful relevancy and materiality.

6. As to the specific items included in the NACA subpoena, a few comments are in order. As to Item 1 pertaining to the negotiations and deliberations of IATA, it should be noted that the full conference documentation including original agenda, documents issued, situation reports, resolutions, minutes, cost committee report, etc., have all already been filed and delivered to the Board. Pan American has only its own working copies of these documents which are too voluminous to copy. In addition to the copies available at the Board, it is our understanding that IATA will have additional copies if these are necessary. As to Item 2 pertaining to the very broad concept of "charter competition", this response has been limited to the documents directly related to the IATA fare resolution. For the reasons specified above, if NACA is seeking documents that are not related to the fare


agreement but involve the broad concept of "charter competition", it is requested that the subpoena be quashed.

7. As to Items 3, 4 and 5, involving essentially traffic data, Pan American is submitting the statistics it has available and which were utilized in the IATA negotiations. Items 6, 10 and 11 which involve traffic estimates in connection with the new transatlantic fare structure, the response is either in the justification already submitted by Pan American or in the additional documents being tendered. On Items 7, 8 and 9 relating to costs in transatlantic service, the documents either available or utilized during the negotiations and deliberations before IATA are those being submitted.

8. In conclusion, Pan American wishes to reiterate its willingness to provide any additional clarification or information that the Board or its staff may deem necessary in the consideration of the IATA agreement before it. NACA claims that the information it seeks is necessary for the Board's review. We believe that this is somewhat presumptuous on the part of NACA and that the Board and its staff are fully capable of determining what is needed for a public interest determination. We stand ready to cooperate with the Board and its staff.

WHEREFORE, in consideration of the above premises, Pan American respectfully requests that the NACA subpoena be quashed in part.

Respectfully submitted,

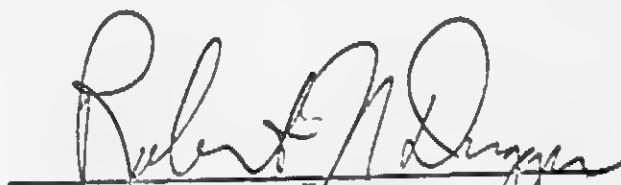


Robert N. Duggan  
Attorney for  
PAN AMERICAN WORLD AIRWAYS, INC.

Dated: March 24, 1969  
New York, New York

Certificate of Service

I hereby certify that copies of the foregoing Motion have been served upon NACA and Trans World Airlines, Inc. in Docket 20781, Agreement C.A.B. 20848, by causing copies, properly addressed and postage prepaid, to be mailed to each of them.

  
Robert N. Duggan

Dated: March 24, 1969  
New York, New York

BEFORE THE  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D. C.

----- x  
:  
Agreements adopted by Joint Conferences Docket 20781  
1-2 and 1-2-3 of the International Air : Agreement CAB 20848  
Transport Association (IATA) relating to :  
transatlantic fares :  
----- x

MOTION OF TRANS WORLD AIRLINES, INC.  
TO QUASH OR MODIFY SUBPOENA

Trans World Airlines, Inc. was served with a subpoena issued at the instance of 11 supplemental carrier members of the National Air Carrier Association, dated March 18, 1969, to produce certain documents at 10:00 a.m. on March 24, 1969 in connection with the above-referenced matter.<sup>1/</sup> The documents to be provided were set forth in a schedule attached to the subpoena (Schedule). TWA hereby moves to quash or modify the subject subpoena in the following respects and for the following reasons:

1. TWA moves to quash or modify the subpoena insofar as it requests all documents which "in part" relate to the matters outlined in the Schedule. Such request is vague and lacks specificity to the extent that it is wholly unreasonable

<sup>1/</sup> Prior to such return date TWA moved to modify the subpoena to establish a return date of 11:00 a.m., March 25, 1969.

and not within the reasonable scope of the materials requested. An unreasonably burdensome search would have to be undertaken to collect all documents which only "in part" relate to the subject matters. This type of document, moreover, would be irrelevant or immaterial in large measure to the matter under consideration, and would not reveal anything substantial not covered in other documents.

2. TWA moves to quash or modify the subpoena insofar as it requests all intracarrier communications, working papers and internal reports and studies. The production of such materials would be wholly unreasonable and not within the reasonable scope of the material requested. In large measure, such working papers, intracarrier communications and internal reports and studies would be immaterial or irrelevant. All of the support and the justification for the matters in question are contained in other papers, and the requests for intracarrier communications, working papers and internal reports and studies constitute a "fishing expedition" not contemplated under the subpoena provisions of the Board's Rules of Practice.

3. TWA moves to quash or modify the subpoena insofar as the request contained in numbered paragraph 2 of the Schedule, inasmuch as such request is indefinite and unclear, and wholly unreasonable.

4. TWA moves to quash or modify the subpoena insofar as the request contained in numbered paragraph 4 of the Schedule,



inasmuch as such materials have already been furnished to the Board, and any additional submission thereof would be wholly unreasonable.

5. TWA moves to quash or modify the subpoena insofar as the request contained in numbered paragraph 5 of the Schedule, inasmuch as TWA does not have the information requested "by points of origin and destination."

6. TWA moves to quash or modify the subpoena insofar as the request contained in numbered paragraph 6 of the Schedule requests information "by carrier", inasmuch as TWA does not have such material; and insofar as it requests the stated information with respect to TWA, inasmuch as such has already been furnished to the Board and it would be wholly unreasonable for TWA to produce it again.

7. TWA moves to quash or modify the subpoena insofar as the request contained in numbered paragraph 7 of the Schedule, inasmuch as such request is unclear and indefinite, the materials are irrelevant or immaterial, and the request is wholly unreasonable and beyond the reasonable scope of the proceeding.

8. TWA moves to quash or modify the subpoena insofar as the request contained in numbered paragraph 8 of the Schedule, inasmuch as TWA does not have the materials available on the basis requested and it would be wholly unreasonable and beyond the reasonable scope of the proceeding to produce them.

9. TWA moves to quash or modify the subpoena insofar as the request contained in numbered paragraph 9 of the Schedule, inasmuch as TWA does not have this type of material.

10. TWA moves to quash or modify the subpoena insofar as the request contained in numbered paragraph 10 of the Schedule, inasmuch as TWA has already provided this information to the Board and it would be wholly unreasonable to require its production again.

11. TWA moves to quash or modify the subpoena insofar as the request contained in numbered paragraph 11 of the Schedule, inasmuch as TWA has already provided this information to the Board and it would be wholly unreasonable to require its production again.

Respectfully submitted,

TRANS WORLD AIRLINES, INC.

March 25, 1969

By

Ulrich V. Hoffmann

Ulrich V. Hoffmann  
Assistant General Counsel

[Certificate of Service Omitted in Printing]



CIVIL AERONAUTICS BOARD

WASHINGTON, D.C. 20428

IN REPLY REFER TO:

AGREEMENT C.A.B. 20848

DOCKET 20781

NOTICE TO INTERESTED PERSONS:

Order 69-3-1, dated March 3, 1969, established certain procedural dates for filing documents, complaints and objections, and answers in the above-entitled proceeding.

The National Air Carrier Association has filed a motion in which it requests, among other things, that the Board suspend the procedural schedule set by Order 69-3-1 until such time as the IATA carriers supply in fact "[f]ull documentation and economic justification for the challenged North Atlantic fares" or until they have complied with the terms of subpoenas duces tecum for which application was contemporaneously filed.

The request that procedural dates established by Order 69-3-1 be suspended is denied. However, the March 27 date established in Order 69-3-1 for filing complaints and objections by interested parties will be extended to April -, 1969, and the April 7 date established for filing answers to complaints will be extended to April 11, 1969.

*Thomas L. Wrenn*  
Thomas L. Wrenn  
Chief Examiner

March 26, 1969

UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D. C.

\*\*\*\*\*  
IATA TRANSATLANTIC FARE AGREEMENTS \*  
\*\*\*\*\*

Docket 20781  
Agreement C.A.B. 20848

RULING ON MOTIONS TO QUASH OR MODIFY SUBPOENAS

At the instance of the National Air Carrier Association (NACA), subpoenas dated March 18, 1969, were served upon Pan American World Airways and Trans World Airlines to produce certain documents on March 24, 1969, in connection with the above-entitled matter.

Pan American and TWA have complied in part. Pan American has moved to quash the subpoena in part while TWA has moved to quash or modify the subpoena in certain respects. NACA has filed an answer opposing the motions.

Upon consideration of the matters set forth in the motions and the answer, the motions are hereby granted. Accordingly, the subpoena served upon Pan American is quashed insofar as it seeks the type of review specified in paragraphs 3, 4, and 5 of Pan American's motion and as to the specific items specified in paragraphs 6 and 7 of Pan American's motion, and the subpoena served upon TWA is quashed or modified insofar as such is sought in paragraphs 1 through 11 of TWA's motion.

*Thomas L. Wrenn*

Thomas L. Wrenn  
Chief Examiner

April 3, 1969

BEFORE THE  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D.C.

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: IATA TRANSATLANTIC FARE :  
: AGREEMENTS :  
: :  
: :  
: :  
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Docket 20731  
Agreement C.A.B. 20648

OBJECTIONS AND COMPLAINT OF MEMBER  
CARRIERS OF THE NATIONAL AIR CARRIER ASSOCIATION

The undersigned supplemental air carriers represented by the National Air Carrier Association (NACA) as their attorney-in-fact, hereby submit, pursuant to Order 69-3-1, their objections and complaint with respect to the instant IATA transatlantic fare agreements. The NACA carriers oppose approval by the Board under Section 412(b) of the Act of the IATA resolutions which eliminate the round-trip discount on basic North Atlantic fares (Resolution 150a); which adopt bulk contract inclusive tour fares, affinity group fares, incentive group fares and group inclusive tour fares in the North Atlantic market (Resolutions 076e, 076m, 076p, 079a, 084a); and which adopt proportional fares for certain California points in connection with the bulk and group fares (Resolution 015, Attachment D; Resolution 079a, Attachment B). In addition, we complain against the foregoing bulk, group and proportional fares under Sections 404(b) and 1002(f) of the Act.

In support whereof, the NACA carriers state as follows:

BACKGROUND

The challenged fare agreements are part of a 275-page package of resolutions filed with the Board on February 26, 1969. (Exh. 1.)<sup>1/</sup> An additional several hundred pages of fare tables relating to the resolutions were filed on March 3, 1969 (Exh. 2). On the same date, the Board issued Order 69-3-1 which established procedures and a procedural schedule for this proceeding.<sup>2/</sup>

The transatlantic fare agreements were negotiated at lengthy meetings of IATA traffic conferences held at Cannes in the Fall of 1968 and at Dallas from January 8 - February 1, 1969. In the interval, from November 26 - December 3, 1968, a High Level Drafting Group met in Geneva. According to Pan American, the conferences were "the longest and most intense in the history of IATA meetings . . . ."<sup>3/</sup> Although the meetings considered a wide range of topics, "fully ten weeks of the IATA negotiations dealt directly or indirectly with charter competition and the new bulk fares."<sup>4/</sup> TWA believed it "essential that the purpose of meeting supplemental competition remain as the focus of Conference deliberation."<sup>5/</sup>

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<sup>1/</sup> "Exh. 1" refers to exhibits being filed with the Board's Docket Section in connection with this pleading. An index of the exhibits is set forth in Attachment "H" hereto.

<sup>2/</sup> NACA's petition for reconsideration of Order 69-3-1, filed March 7, 1969, is still pending.

<sup>3/</sup> Pan American economic justification, filed March 14, 1969, p. 1.

<sup>4/</sup> TWA economic justification, filed March 14, 1969, Attachment VII, p. 2.

<sup>5/</sup> Undated TWA document "Group Contract Space Proposals," p. 1 (Exh. 3).

And the President of IATA, addressing the Cannes meeting, "singled out the challenge of non-IATA carriers in the field of charter operations as perhaps the most difficult problem faced by the Conferences . . . ."<sup>6/</sup>

(See pp. 13-17, infra.)

The major elements of the proposed North Atlantic fare agreements are, first, an increase in economy and first class fares via elimination of the 5 per cent round-trip discount, and, second, adoption of an array of very low group and bulk fares.<sup>7/</sup> The elimination of the round-trip discount would, by way of illustration, raise the basic New York/London round-trip economy fare from \$399 to \$420 and during peak periods from \$484.50 to \$510.

With respect to the proposed group and bulk fares, the new bulk inclusive tour fares for groups of 40 or more eastbound and 20 or more westbound between New York/London round-trip range from \$175 off-season to \$220 on-season. Affinity group fares for groups of 50 eastbound and 40 westbound between the same points range from \$200 to \$250 round-trip - the \$200 fare having been reduced from \$267. New fares for so-called incentive groups of 40 or more eastbound and 20 or more westbound range from \$200 to \$212 round-trip. And the existing GIT fares for groups of 15 or more have been extended - with \$230 being the lowest such New York/London fare.<sup>8/</sup> In connection with the bulk, incentive and affinity group

<sup>6/</sup> Minutes of Composite Passenger Fare Conferences, Cannes, France, 19 September-26 October 1960, p. 1 (Exh. 4, hereinafter "Cannes Minutes").

<sup>7/</sup> Also, the 1-21 day excursion and individual IT fares were made available, with a surcharge, during weekend and blackout periods.

<sup>8/</sup> For the convenience of the Board, a chart prepared by Pan American showing the terms and conditions of all of the various fares on a New York/London basis is attached hereto (Attachment "A"). A chart showing the passenger-mile yields of the fares (New York/London) is set forth in Attachment "B" hereto.



(50/40 passengers, effective November 1, 1969) fares, proportional fares of \$130 applicable to Los Angeles and San Francisco were adopted, so that the proposed off-peak bulk fare Los Angeles/London is \$305 round-trip.

The extent of the discounts from economy fares thus proposed is illustrated by the following table of New York/London fares:

Proposed Discounts from IATA North  
Atlantic Economy Fares

	<u>Peak Season</u>		<u>Off-Season</u>	
	<u>Amount</u>	<u>Discount from Economy</u>	<u>Amount</u>	<u>Discount from Economy</u>
Economy Fare	\$510		\$420	
14/21 day Excursion	350	31%	300	29%
21-day Individual IT	320	37	270	35
GIT Basic	280	45	230	45
Bulk IT	220	57	175	58
Affinity 50/40 and Incentive	212	58	200	52

The proposed individually-ticketed fares, with the round-trip discount eliminated on normal fares, are marked to become effective on May 1, 1969, as are the GIT<sup>9/</sup> and some affinity group fares. The remaining affinity group fares, the bulk IT and incentive group fares, and the proportional fares to be used in connection therewith, would not become effective until November 1, 1969.

The NACA carriers submit that the Board cannot validly find on the present record that the challenged fare agreements are not "adverse to the public interest, or in violation of the Act" (Section 412(b)) and accordingly that it cannot approve them. In support of this view, we contend, first, that the procedures adopted by the Board in this proceeding are insufficient to provide an adequate factual basis for Board action under

<sup>9/</sup> Slightly modified GIT fares have also been proposed for April 1, 1970 effectiveness.

Section 412(b) and, second, that based on the present record the fare agreements are shown to be adverse to the public interest and in violation of the Act. As to the specific fare agreements, we argue that:

- (a) elimination of the round-trip discount on normal fares is unjustified and serves to subsidize low bulk and group fares directed against the supplementals;
- (b) the bulk and group fare agreements are designed to and will result in serious diversion from the North Atlantic charter traffic of the supplementals and raise substantial antitrust issues;
- (c) the bulk, incentive group and affinity group fares are unreasonably low and thus adverse to the public interest;
- (d) the incentive group, affinity group, bulk and GIT fares, as well as the reduced proportional fares to California points, are unjustly discriminatory and/or unduly preferential in violation of Sections 404(b) and 1002(f) of the Act; and
- (e) the bulk fare agreement renders the tour operator an unauthorized indirect air carrier in violation of Section 401 of the Act.

I.

THE PROCEDURES FOLLOWED BY THE BOARD IN  
THIS PROCEEDING ARE INSUFFICIENT TO PROVIDE  
AN ADEQUATE BASIS FOR AGENCY ACTION

In our petition for reconsideration of Order 69-3-1, filed March 7, 1969, we argued that the exchange-of-pleadings procedure adopted by the Board, especially on an expedited schedule, could not provide the kind of comprehensive factual record needed to decide the complex and difficult issues presented in this case. Subsequent events have served only to confirm that view. The "economic justifications" submitted by

the carriers can only be described as casual and incomplete. And the subpoenas issued at the instance of the NACA carriers<sup>10/</sup> have brought forth only a meager flow of documents - certainly not amounting to an economic justification - along with two motions to quash.

Extended discussion is not required to show that this is an unusually complicated and important proceeding. The instant case involves the most highly-traveled international air passenger market in the world, and the one with the most complex fare structure. A number of fare resolutions have been challenged, involving both fare increases and decreases, highly confusing terms and conditions, and hundreds of points of origin and destination. The agreements were reached after multi-carrier negotiations described "as the longest and most intense in the history of IATA meetings . . . ."<sup>11/</sup> The most difficult kind of questions of reasonableness (and related cost issues), competitive impact, discrimination and preference are presented. The documentary evidence in existence, both economic and otherwise, is enormous. And yet the Board is attempting to divine the public interest in this case on the basis of a mere exchange of written pleadings.

The absence of any opportunity for cross-examination is reflected in the character of the "economic justifications" filed by the carriers. A garden-variety fare investigation before the Board regularly brings forth far more comprehensive, detailed and realistic economic evidence than that submitted by Pan American and TWA. See NACA Motion to Suspend Procedural

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<sup>10/</sup> The subpoenas (Exh. 5) and an accompanying application (Exh. 6) were presented to the Board's Chief Examiner pursuant to Rule 19(a) of the Board's Rules of Practice.

<sup>11/</sup> Pan American economic justification, p. 1.

Schedule, filed March 18, 1969. It is doubtful, for example, that Pan American would have dismissed the supplementals' ITC traffic so casually (PAA economic justification, pp. 6, 7) if its witnesses were to be subject to cross-examination based upon a Pan American memorandum recommending the adoption of low North Atlantic group fares to "prevent any substantial diversion of traffic to the Supplemental carriers' inclusive tour charters." Nor would Pan American have disingenuously estimated that no diversion from the supplementals would result from the proposed bulk fares (pp. 5-6) if its witnesses faced cross-examination based on numerous contradictory statements in other Pan American documents (see pp. 12-17, infra).

The limited discovery obtained by NACA via subpoenas, while useful, is no substitute for an evidentiary proceeding. In the first place, the materials obtained are woefully incomplete. Pan American and TWA admittedly failed to submit all of the documents requested, instead filing motions to quash. See NACA Answers to Motions to Quash, filed March 27, 1969.<sup>13/</sup> And IATA, after requesting a one-day delay "in order to respond jointly" to the subpoena served upon it,<sup>14/</sup> submitted only certain formal IATA documents. Second, the Board has allowed only ten days between the receipt of subpoenaed documents and the deadline for filing this pleading. Third, and most importantly, the subpoena process affords no opportunity to cross-examine witnesses concerning the documents obtained.

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<sup>12/</sup> Memorandum re IATA agenda submissions, May 1968, p. 12 (Exh. 7); see also pp. 7-8.

<sup>13/</sup> The motions are still pending as of this date.

<sup>14/</sup> IATA telegram to Edward J. Driscoll, President of NACA, received March 24, 1969 (emphasis added) (Exh. 8).

The Board ordered an evidentiary investigation in Group Inclusive Tour Basing Fares to Hawaii, Docket 20580, where the introduction of low GIT fares by scheduled carriers in the mainland-Hawaii market raised issues very similar to those raised here. (Order 63-12-114, December 20, 1968.) In the present case, where the bulk and group fares have been adopted by the concerted action of competing carriers and in conjunction with an increase in basic fares, the case for an evidentiary proceeding is even stronger. Compare Local Cartage Agreement Case, 15 C.A.B. 850 (1952) (evidentiary hearing held to explore, inter alia, the competitive impact of a Section 412 agreement). The fact that IATA and many foreign carriers are here involved does not preclude this procedure, as shown by the Board's recent action directing an evidentiary investigation of an IATA transatlantic cargo rate agreement. (Order 69-3-47, March 13, 1969.) And we point out that Section 1002(f) of the Act provides for "notice and hearing" in investigations of unjust fare discriminations and undue preferences in foreign air transportation.

We again urge the Board to conduct a full evidentiary hearing in the instant case. For the procedures followed thus far, and the record obtained thereby, are simply inadequate in fact and law to serve as a proper basis for the exercise of the Board's responsibilities under Sections 412(b) and 1002(f).

## II.

BASED ON THE PRESENT RECORD THE CHALLENGED FARE  
AGREEMENTS ARE ADVERSE TO THE PUBLIC INTEREST  
AND IN VIOLATION OF THE ACT

The Board's "assessment of the public interest [under Section 412(b)] is governed by the broad considerations set forth in Section 102

of the Federal Aviation Act, and by due regard for antitrust policies and principles." VOLUME AIR Agreement, 30 C.A.B. 1007, 1009 (1960). Its determinations under Sections 404(b) and 1002(f) of the Act are governed by the legal principles applicable to discrimination in ratemaking. Although the present record is, as we have shown, seriously inadequate, the evidence that is available clearly points, in our view, to the conclusion that the challenged fare agreements are adverse to the public interest and in violation of the Act.

A. Elimination of the Round-Trip Discount on Normal Fares Is Unjustified and Serves to Subsidize Low Group Fares Directed at the Supplementals.

Under the instant IATA agreements, the 60 per cent or so of trans-<sup>15/</sup>atlantic passengers who utilize normal economy and first class fares will experience a fare increase, due to the elimination of the round-trip discount. Most of those passengers, such as business travelers, are unable to use or simply are not interested in the wide assortment of low-priced group fare arrangements which the IATA carriers have adopted. Not surprisingly, the National Industrial Traffic League, on behalf of the<sup>16/</sup> business traveler, has appeared in this proceeding and protested:

"The sole purpose of [eliminating the round-trip discount] is to subsidize competition by scheduled airlines with supplemental airlines for international vacation travel through offsetting lower revenues obtained from such vacation travel with a higher level of fare applicable to business travel. The desire of the scheduled airlines to attract the international vacation traveller certainly cannot properly or fairly justify an increase in the fare applicable to the international business traveller."

<sup>15/</sup> Pan American economic justification, Attachment B.

<sup>16/</sup> Statement of the National Industrial Traffic League in Opposition to Approval of the Fare Agreement, filed March 27, 1969, pp. 2-3.



The Board itself, in correspondence with Pan American and TWA, stated that it saw "no basis for North Atlantic economy fare increases in the form of surcharges, elimination of the round-trip discount, fare structure changes or other modification."<sup>17/</sup> In a subsequent letter, the Board said that while "maintenance of the round-trip discount, per se, is [not] an essential element of an acceptable transatlantic fare agreement . . . any change in the round-trip discount should be accompanied by offsetting fare adjustments."<sup>18/</sup> It pointedly added that it did "not consider proposals such as the 'bulk fare' plan . . . as appropriate offsets to the elimination of the round-trip discount."

The IATA position, as we understand it, is that extension of the 14/21 day excursion fare and the individual IT fare to weekends and other previously blacked-out periods constitutes an "appropriate offset" to the increase in normal fares. Thus, Pan American states that "the effect of the round trip discount elimination is largely balanced by the reductions made to individual promotional fares."<sup>19/</sup> Economic data submitted by TWA, however, along with other evidence, directly refutes this view.

The available evidence indicates that the extension of excursion and individual IT fares to previously blacked-out periods was accomplished for reasons of carrier self-interest, not as an "offset" to a fare

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<sup>17/</sup> Letter of Acting Chairman Murphy, dated August 19, 1968 (Exh. 9).

<sup>18/</sup> Letter of Chairman Crooker, dated October 15, 1968 (Exh. 10).

<sup>19/</sup> Pan American economic justification, p. 6. Similarly, Pan American advised the Board on November 6, 1968, in an attachment to a letter to Chairman Crooker reporting on the Cannes meeting, that "in consideration of any elimination of the round-trip discount, amendments would be made to individual excursion and inclusive tour fares which would eliminate all 'blackout' periods" (Exh. 11).



increase, and that it will provide added, not reduced, revenues. A \$30 surcharge will be imposed in connection with the use of those fares during weekends and 85¢ during peak periods. With the surcharges, TWA estimates that the net effect of extending the 14/21 day excursion fare to all-year validity will be to add about \$660,000 to its revenues.<sup>20/</sup> And extension of the individual IT fares to all-year validity will add \$28,000 to TWA's revenues.<sup>21/</sup> There is no reason to believe that the experiences of other IATA carriers will be materially different.

Furthermore, records of the Cannes conference show that extension of the excursion and individual IT fares was actively sought by IATA carriers to improve lagging load factors on flights during weekends and other blackout periods. One foreign carrier, proposing a sharp reduction in blackout periods and a surcharge, stated.<sup>22/</sup>

"All available statistics (carriers' and IATA's) reveal a clear drop in the general load-factor during the weekends and during the first black-out period in EB direction and the second black-out period in BB direction."

Similar views were expressed by TWA, which advised that its "load factors reveal that there may have been a moderate over-compensation resulting in more seats being available on the weekends . . . than during the balance of the week."<sup>23/</sup> The same carriers urged extension of the individual IT fares into blackout periods for identical reasons.<sup>24/</sup>

<sup>20/</sup> TWA economic justification, Exhibit II.

<sup>21/</sup> Ibid., Exhibit III.

<sup>22/</sup> Conf. Doc. 524, Agenda Item 406, June 18, 1968 (Exh. 12).

<sup>23/</sup> Conf. Doc. 285, Agenda Item 408, June 18, 1968 (Exh. 13).

<sup>24/</sup> Conf. Docs. 239 and 658, Agenda Item 417, June 18, 1968 (Exh. 14, 15).

Thus, we fail to see how the Board can possibly consider that extension of the excursion and individual IT fares to blackout periods constitutes an "appropriate offset" to elimination of the round-trip discount.

Elimination of the round-trip discount, it is clear, will provide greatly increased revenues to the IATA carriers. TWA estimates that it will derive \$5.4 million in added revenues.<sup>25/</sup> And a similar estimate derived from Pan American data is \$4.7 million.<sup>26/</sup>

The obvious result of eliminating the round-trip discount (effective May 1) is thus to provide a large sum of money to the carriers to offset any reductions in revenues as a consequence of the low bulk and group fares (effective November 1). As we now show, it is abundantly clear, even from the limited materials available to us, that the bulk and group fares are aimed squarely at the charter traffic of the supplementals.

B. The Bulk and Group Fare Agreements Are Designed to and Will Result in Serious Diversion from the Transatlantic Charter Traffic of the Supplementals.

1. Although Pan American's economic justification seems to suggest that the supplementals' transatlantic charter traffic was the farthest thing from the IATA carriers' minds when they adopted the bulk

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<sup>25/</sup> TWA economic justification, Exhibit I.

<sup>26/</sup> See Attachment "C" hereto. The IATA carriers have not submitted any substantial evidence of economic need for a fare increase; indeed, the Board is on record as seeing "no basis" for one. Moreover, it is hardly credible that carriers having a demonstrable economic need for a fare increase would at the same time adopt an entire panoply of new low or sharply reduced group fares.

and group fares,<sup>27/</sup> the minutes of the Cannes meeting show instead that Mr. F. J. Crosson of Pan American advised the member carriers

"... that while the Supreme Court of the United States had, in a recent decision held that US Supplemental Carriers could not perform International Inclusive Tour Charters, a Bill before Congress to permit such International IT Charters was in the process of passage into law. In view of these circumstances he indicated that it was imperative that IATA do everything possible to divert charter traffic to scheduled services."<sup>28/</sup>

Mr. Crosson's statement is important because he was the Chairman of an IATA Charter Study Group, whose report he was presenting to the Cannes meeting. Indeed, there is significant evidence that the adoption by IATA of low bulk and group fares may have stemmed in no small part from recommendations made by Mr. Crosson and his Study Group.

The subpoenaed documents produced by Pan American in this case include a Report of the Charter Study Group as Submitted to the TAC (i.e., Traffic Advisory Committee of IATA)<sup>29/</sup> dated June 17, 1963, which contains the Group's recommendation "for coping with charter competition on a worldwide basis . . ." (p. 2). The recommendation was a low GIT and affinity group fare. In describing the advantages of such a fare, the Report stated (p. 7):

"A sufficiently low yet economic fare would (i) generate new traffic, (ii) divert a substantial part of present traffic from affinity charters now operated by both IATA and non-IATA carriers, (iii) compete effectively with the charter

<sup>27/</sup> Compare TWA's statement that "fully ten weeks" of the negotiations were devoted to charter competition and the new bulk fares (TWA economic justification, Attachment VII, p. 2).

<sup>28/</sup> Cannes Minutes, p. 197; emphasis added. In his statement, Mr. Crosson also referred to declining IATA load factors in the North Atlantic and to growing non-IATA and supplemental charter competition.

<sup>29/</sup> Exh. 16.

rates now being offered and likely to be offered by the Supplementals for use with inclusive tours, and (iv) prevent any substantial diversion of traffic to the Supplemental carriers' inclusive tour charters." <sup>30/</sup>

An intra-company memorandum concerning IATA agenda submissions, <sup>31/</sup> apparently prepared by Mr. Crosson in late May 1968, states that Pan American will propose adoption of "the program recommended by the IATA Charter Study Group." (p. 3) That memorandum refers specifically to a \$200 New York/London GIT and affinity group fare to combat charter competition (p. 12).

An answering intra-company memorandum dated June 10th <sup>32/</sup> suggests a modification in the "affinity group fare resolutions so that a single entity, such as Ford, could purchase affinity group tickets for their distributors and dealers on incentive movements" (p. 1). This memorandum also refers to "the continuing danger from the supplementals due to possible Congressional restoration of their ITC rights and their affinity charter operations" (p. 3).

The Report of the Charter Study Group as Submitted to the TAC was included in the conference documents of the Cannes meetings <sup>33/</sup> in slightly edited form. <sup>34/</sup> At about the same time, a submission of Pan American proposed

<sup>30/</sup> An attachment to the Report contains several questions (but no answers) submitted by the Study Group to its members, including the following:

"Question 5: To what extent do IATA members aid and assist non-IATA charter air carriers to operate at a lesser cost than otherwise would prevail and should consideration not be given to controlling this aspect of the problem."

<sup>31/</sup> Op. cit. note 12, supra.

<sup>32/</sup> Exh. 17.

<sup>33/</sup> Conf. Doc. 1420, Agenda Item 743, June 18, 1968 (Exh. 18).

<sup>34/</sup> For example, the words "compete effectively with the charter rates . . . [of] the supplementals" (as quoted above) were changed to "provide an attractive alternative to charter rates . . . ."

"the adoption of a 'Bulk' Group Fares Resolution along the lines of a recommendation from the Charter Study Group." with the fare level to be at \$200 New York/London round-trip.<sup>35/</sup> In proposing a new bulk fare, Pan American was joined by other carriers, including one foreign carrier which "estimated that a great part of the traffic presently moving on IATA and non-IATA Charter will be attracted to this new form."<sup>36/</sup>

Documents available to us regarding the meetings at both Cannes and Dallas make clear that the new bulk IT fares are in large measure directed at forestalling the potential ITG traffic of the supplementals. Thus, TWA, in an intra-company memorandum prepared immediately prior to the Dallas meeting, stated that the bulk fare concept "can be effectively utilized to prevent, or at least limit, the ITG potential of the supplementals."<sup>37/</sup> At Cannes, one foreign carrier supported a bulk fare as a solution to its complaint that "the current IATA fare structure on the North Atlantic does not allow members to be fully competitive with the growing number of non-IATA charter operators who are likely to start offering inclusive Tour Charters on the Atlantic in the relatively near future."<sup>38/</sup> And at Dallas, a few carriers, "still not convinced that the proposed bulk concept was, in fact, the answer to the competition before the industry," were "prepared to accept the basic principle advocated by the proponents of this new concept, i.e., the need of a new fare to meet inclusive tour

<sup>35/</sup> Conf. Doc. 756, Agenda Item 434, June 18, 1968 (Exh. 19).

<sup>36/</sup> Conf. Doc. 1052, Agenda Item 436, June 18, 1968 (Exh. 20).

<sup>37/</sup> TWA memorandum re bulk fares, dated January 3, 1969 (Exh. 21).

<sup>38/</sup> Conf. Doc. 1056, Agenda Item 438, June 18, 1968 (Exh. 22).

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charter competition . . . ."<sup>39/</sup>

The bulk fares are also aimed at the affinity charter traffic of the supplementals - TWA so stated in its economic justification<sup>40/</sup> - as are the affinity and incentive group fares. For example, one foreign carrier submitted a list of recommendations at Cannes "to improve the effectiveness of the affinity group fares as a competitive tool vis-a-vis charter operations . . . ."<sup>41/</sup> At Dallas, several carriers considered the affinity group fare resolution "as an effective means of counteracting charter competition via scheduled services . . . ."<sup>42/</sup> And the incentive group fares are, of course, directed at the sales incentive charter traffic of the supplementals.<sup>43/</sup>

These aims of the IATA carriers are also reflected in the texts of the resolutions adopted. Thus, the bulk fare resolution, as we understand it, permits any three IATA carriers to reduce, modify or suspend the agreed fares if they consider it necessary to compete with a non-IATA carrier.<sup>44/</sup> The same resolution also provides for an earlier effective date with respect to service to points in Spain or Portugal if an IATA carrier serving those

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<sup>39/</sup> Minutes of Reconvened Traffic Conferences, Dallas, January 8 - February 1, 1969, p. 2 (Exh. 23) (hereinafter "Dallas Minutes").

<sup>40/</sup> Attachment VII, p. 1. The carrier evidently changed its mind after expressing a somewhat contrary view in the January 3 intra-company memorandum.

<sup>41/</sup> Conf. Doc. 752, Agenda Item 415, June 18, 1968 (Exh. 24).

<sup>42/</sup> Dallas Minutes, p. 22.

<sup>43/</sup> In view of the rapid growth in recent years of IATA North Atlantic scheduled traffic, there can be no basis for a contention that the IATA carriers are seeking to "re-divert" passengers previously lost to the supplementals' charter services. See Attachment "D" hereto.

<sup>44/</sup> Resolution 079a, p. 11.



points considers it "necessary to effectively counteract non-IATA competi-  
tion . . . ."<sup>45/</sup>

2. That the bulk and group fares will succeed in diverting large numbers of passengers from the supplementals' charter flights seems clear. For those fares permit travel on scheduled flights of "name" (i.e., intensively advertised) airlines virtually at the level of charter rates.

Pan American's effort to depict the bulk and affinity group fares as falling "in a range between individual promotional fares and pro-rate prices, applicable to plane-load charters"<sup>46/</sup> does not fairly portray the facts. As shown in Attachment "B" hereto, the passenger-mile yields on the bulk and group fares for a New York/London round-trip are:

	<u>yield</u>
Bulk fare - off-peak (no stopovers)	2.40¢
Bulk fare - shoulder (no stopovers)	2.61
Affinity and incentive fares - off-peak	2.75
Affinity and incentive fares - shoulder	2.89

By comparison, the actual revenues per seat mile which Trans International Airlines will experience in its transatlantic operations for June-September 1969, based on signed charter contracts, are as follows:

	<u>30-2-60 Series</u> <u>(250-seat)</u>	<u>B-727</u> <u>(125-seat)</u>
June	2.26¢	2.62¢
July	2.29	2.48
August	2.30	2.65
September	2.07	2.41

<sup>45/</sup> Ibid. at 13.

<sup>46/</sup> Pan American economic justification, p. 4.



Since less than 100 per cent load factors are often experienced, the yield per passenger mile is slightly higher - and thus even closer to the passenger-mile yields under the bulk and group fares.

The foregoing TIA figures are based on actual contracts, unlike the \$131-\$138 New York/London charter price which Pan American repeatedly refers to in its economic justification (pp. 4, 7, Attachment D). The TIA tariff cited by Pan American provides an aircraft-mile rate which in almost all cases is superseded by higher point-to-point rates, and is thus almost never used. Also, we note that even Attachment D to the Pan American economic justification, which lists selected transatlantic charter rates of supplemental carriers, contains a peak-season 3.33¢ per seat mile live rate for Saturn's 180-seat DC-8-50 aircraft and a 2.46¢ per seat mile rate (live or ferry) for Capitol's 183-seat DC-8-55 aircraft.

In short, Pan American's implication that the bulk and group fares fall approximately midway between individual promotional fares (which yield 4 to 6 cents per passenger-mile) and charter rates is simply not accurate. Rather, the yields under the new fares are almost the same as charter yields.

The precise extent of diversion from the supplementals' charters which would result from the bulk and group fares is difficult to forecast; but it would be very substantial. In the analogous Group Inclusive Tour Basing Fares to Hawaii case, Pan American has itself forecast that about 35 per cent of its passengers under the GIT fares will be diverted from the supplementals. (Exhibit PA-12, Docket 20580). And in that case six supplementals estimated that an aggregate \$23.4 million in mainland-Hawaii charter revenues would be lost to them during 1969 by reason of the GIT fares. (Exhibits NACA-1 through 6, Docket 20580.)

The North Atlantic market is one of the two prime markets - mainland-Hawaii being the other - which provide the vast bulk of the civil passenger charter traffic of the supplementals. Unless the Board acts to prevent it, there is every likelihood that the IATA bulk and group fares will succeed in their intended goal of diverting to the IATA carriers a large portion of the supplementals' transatlantic charter traffic.

3. In evaluating the public interest considerations relating to the fare agreements, the Board must start from the premise that the agreements constitute a violation of the antitrust laws and that their proponents bear a heavy burden of proof in establishing that approval of the agreements - and their consequent immunization under Section 414 - will not contravene the public interest. Local Cartage Agreement Case, 15 C.A.B. 850, 852-53 (1952); see VOLUMAIR Agreement, 30 C.A.B. 1007 (1960). The Board stated in the former case (ibid.):

"The other basic consideration is that the Board, in determining whether an agreement is adverse to the public interest under section 412 of the Act, cannot ignore the question of whether such an agreement may run counter to the principles and purposes of the antitrust laws. The approval of an agreement under section 412 exempts the agreement from the operation of the antitrust laws by virtue of section 414. While this exemption demonstrates the Board's power to approve agreements which otherwise would violate the antitrust laws, it also imposes upon the Board, in determining the effect on the public interest of agreements for which approval is sought, the duty to evaluate such agreements in the light of antitrust policy and principles. Where an agreement has among its significant aspects elements which are plainly repugnant to established antitrust principles, approval should not be granted unless there is a clear showing that the agreement is required by a serious transportation need, or in order to secure important public benefits." (Footnote omitted.)

Here, in addition to the bare agreement on price, the bulk and group fares are, as we have shown, expressly designed to divert the charter traffic of the supplementals. Moreover, elimination of the round-trip discount

on normal fares will afford greatly increased revenues to the IATA carriers which can be used to subsidize the bulk and group fares.<sup>47/</sup> This provides, in effect, a war chest for use against the supplementals in the competition for group traffic, which is the only market in which the supplementals can operate. If the IATA carriers are successful in curtailing or eliminating the supplementals' charter services, then the usefulness to them of low bulk and group fares will diminish or cease, and those fares may well be discontinued. Under the circumstances, we believe that the fare agreements constitute an unfair and destructive competitive practice contrary to the public interest (see §102(c)) and not "required by a serious transportation need, or in order to secure important public benefits" (Local Cartage, supra).

C. The Bulk, Affinity Group and Incentive Group Fares Are Unreasonably Low

Although the Board is not empowered to determine the levels of fares in foreign air transportation, the reasonableness of proposed IATA fares is directly pertinent to its public interest determination under Section 412(b) (see Section 102(c) of the Act). See also Asiatic Animal Imports, Inc. v. Pan American World Airways, Inc., Order E-22830, November 1, 1965, p. 2. Contrary to Pan American's argument that "[transatlantic] promotional fares should not be judged by some standard that the Board may deem appropriate for domestic transportation . . . ,"<sup>48/</sup>

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<sup>47/</sup> The IATA carriers, of course, have no significant competition for normal-fare traffic.

<sup>48/</sup> Pan American economic justification, p. 4.

the Board has apparently considered the reasonableness of IATA transatlantic fares under much the same standards it has applied to domestic fares. See IATA Group Fares Agreement, 36 C.A.B. 33, 41-42 (1962).

Judged by accepted standards for determining reasonableness, the bulk, affinity group (40/50 passengers) and incentive group fares are, we believe, unreasonably low.

1. It is an accepted standard of ratemaking that proposed fares must be reasonably related to the costs of service. Air Freight Rate Investigation, 9 C.A.B. 340 (1948). "To be reasonably related to cost a fare should be high enough to pay its own way eventually on a fully allocated cost basis." Pittsburgh-Philadelphia No-Reservation Fare Investigation, 34 C.A.B. 508, 514 (footnote omitted). With the exception discussed below, the fully-allocated cost standard is the usual one, applied to all basic fares and to discounted or promotional fares which have an impact upon the amount of capacity to be provided. Summer Excursion Fares, 11 C.A.B. 218, 222 (1960); Pittsburgh-Philadelphia No-Reservation Fare Investigation, supra, 34 C.A.B. at 510-11.

It is entirely clear in the present case that the challenged bulk and group fares do not come close to covering fully-allocated costs. Although neither Pan American nor TWA undertook to supply cost data in their economic justifications, an analysis of the subpoenaed IATA data<sup>49/</sup> shows that the proposed fares fail by a wide margin to cover passenger-mile costs. Indeed, in the case of off-peak bulk fares, they fail even to cover available seat-mile costs. The passenger-mile cost (including return)

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<sup>49/</sup> IATA Report of the 1968 Cost Committee Meeting, Conf. Doc. 11, Agenda Item 7 (Exh. 25).

for 1968-69 estimated by IATA for North Atlantic operations is 4.59 cents, and the available seat-mile cost is 2.57 cents. See Attachment "B" hereto. The extent to which the proposed fares fail to cover the carriers' costs is shown by the following table:

	Yield Per Pass. Mile	Cost Per Available Seat Mile	Revenue Required Per Pass. Mile	Per cent Yield of Revenue Required
Bulk Fares:				
Off-peak	2.53¢	2.57¢	4.59¢	55
Shoulder	2.75	2.57	4.59	60
Peak	3.18	2.57	4.59	69
Affinity (50/40 pax) and Incentive Fares:				
Off-peak	2.75¢	2.57¢	4.59¢	60
Shoulder	2.89	2.57	4.59	63
Peak <u>50/</u>	3.42	2.57	4.59	75

Thus, if the fares are to be judged on a fully-allocated cost basis, they are grossly unreasonable.

2. We recognize that "economic considerations do not demand that at all times the rates for any class of traffic or type of service must cover the fully-allocated cost of carrying that traffic or providing that service . . . ." Air Freight Rate Investigation, *supra*, 9 C.A.B. at 344-45. But use of the alternative profit-impact standard has at least two prerequisites. First, existing equipment, facilities and services must be utilized to accommodate the traffic generated by the challenged fare; in other words, the fare cannot influence the volume of service provided. See Summer Excursion Fares, *supra*; Initial Decision of Examiner Milton H. Shapiro, California-Nevada Excursion Fares Investigation, Docket 10976, June 4, 1963, at 19. Second, the fare must "reasonably be

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50/ Incentive group fares are not available during the peak season.

expected" eventually to cover fully-allocated costs. Pittsburgh-Philadelphia No-Reservation Fare, supra, 34 C.A.B. at 508. Neither prerequisite is met in the present case.

With respect to the first, it is evident that promotional fare traffic, including group fare traffic, is and will be a major factor influencing the volume of IATA North Atlantic scheduled service.<sup>51/</sup> This is shown by the availability of bulk and affinity group fares at extreme peak periods. For example, Pan American and TWA each experienced 81.1 per cent westbound load factors during August 1968.<sup>52/</sup> In the same month of 1970, a \$190-\$220 bulk fare and a \$250 affinity group fare New York/London would be in effect for westbound flights.<sup>53/</sup> It is difficult to believe that the availability of those fares in the context of more than 80 per cent load factors would not result in some additional service.

With regard to the prerequisite that even new promotional fares must be capable eventually of covering fully-allocated costs, we submit that no foreseeable future reductions in the unit costs of IATA carriers would be large enough to permit the challenged fares to cover their fully-allocated costs. Indeed, IATA unit costs have remained virtually constant over the past three years.<sup>54/</sup> As shown above, yields under the bulk, incentive and affinity group fares are in some cases 60 per cent or less of unit costs. In short, the available evidence indicates that the bulk,

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<sup>51/</sup> See Attachment "E" hereto, which is derived from subpoenaed data submitted by Pan American (Exh. 26).

<sup>52/</sup> See Attachment "F" hereto.

<sup>53/</sup> Except for affinity group fares on weekend dates.

<sup>54/</sup> IATA Report of the 1968 Cost Committee Meeting, supra, at 21.



incentive and affinity group fares will not at any time in the foreseeable future be able to cover fully-allocated costs.

Accordingly, there is no basis for application of the profit-impact standard,<sup>55/</sup> and the challenged fares must be deemed to be unreasonably low.

3. The proposed bulk and group fare levels are also unreasonable because they create a seriously distorted relationship between normal individually-ticketed fares, group promotional fares and charter rates. See NACA Petition For Rulemaking, Docket 20767, filed February 26, 1969. If it is to maintain a reasonable relationship between these categories of fares, the Board certainly should not, we believe, approve group fares which afford any greater discount from economy fares than the 45 percent discount under basic GIT fares now in existence.

D. The Incentive, Affinity Group, Bulk, GIT and California Proportional Fares Are Each Unjustly Discriminatory and/or Unduly Preferential.

At the Dallas meeting, several IATA carriers, not then ready to accept the bulk fare proposal, stated that "in their opinion, the more the matter was assessed, the more it became apparent that the new concept would contain extremely discriminatory aspects."<sup>56/</sup> Indeed, it does. And the incentive and affinity group fares perhaps even more so. In addition, both the GIT fare and the proportional fares to California points appear to be unjustly discriminatory and/or unduly preferential. We submit that

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<sup>55/</sup> There is no evidence of record to show that the fares in question would meet a profit-impact test even if applicable.

<sup>56/</sup> Dallas Minutes, p. 2; emphasis added.



each of these fares is adverse to the public interest (Sections 102(c) and 412(b)) and violative of Sections 404(b) and 1002(f) of the Act.

1. Under the IATA resolutions, bulk and group fare passengers would travel in the economy-class compartment of scheduled transatlantic flights and receive the same in-flight services as economy-fare passengers. Their fares, however, would be only a fraction of the amounts paid by economy-fare passengers. For example, a person utilizing the off-season bulk fare New York/London would pay only 41.7 per cent of the amount paid by economy-fare passengers traveling in the same compartment - a discount of over 58 per cent.<sup>57/</sup> A person traveling on affinity<sup>58/</sup> or incentive group fares during off-season periods would receive a discount of 52 per cent off the economy fare and during shoulder periods 50 per cent.

We submit that neither reductions in carrier costs, nor the character of the restrictions imposed in connection with the use of the fares, justify discounts of that magnitude. Moreover, in the case of incentive and affinity group fares, those fares are not available to all but only to a limited segment of the public. Since the incentive and affinity group fares are thus the most blatantly discriminatory, we shall consider them first.

a. The affinity group fares scheduled to become effective May 1, 1969 are available only to "members (or employees) of the same association, corporation, company or other legal entity . . . which shall have principal purposes, aims and objectives other than travel, and sufficient affinity existing prior to the application for transportation

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<sup>57/</sup> The bulk fare discount during the peak season is about 57 per cent.

<sup>58/</sup> Groups of 50 eastbound or 40 westbound.

to distinguish it and set it apart from the general public . . ." (Resolution 076i, p. 2). The fare resolution scheduled to become effective November 1, 1969, adds the requirement that the organization have "been in existence no less than 2 years . . ." (Resolution 076e II, p. 4).

The incentive group fares are even more narrowly available, with "Incentive Groups" being defined as:

" . . . groups of employees and/or dealers and/or agents (including their spouses) of the same business firm(s), corporation(s) or enterprises (excluding nonprofit organizations) traveling under an established Incentive Travel Program, which rewards an employee for past work or provides an incentive for future activities. . . ." <sup>59/</sup>

With respect to affinity group fares, the Board prior to 1962 had held such fares to be unjustly discriminatory. Free and Reduced-Rate Transportation Case, 14 C.A.B. 481, 489, 509-10 (1951); IATA Agreements, Group Excursion Fares, 26 C.A.B. 755, 756 (1958). Although it upheld IATA affinity group fares in 1962 in the context of an adverse industry economic picture, IATA Group Fares Agreement, 36 C.A.B. 33, 41 (1962), <sup>60/</sup> the Board stated only a year later:

"The affinity restriction in itself represents a very substantial restriction of these fares to the general public. Although the Board approved such restriction a year ago and is prepared to approve that aspect of the instant agreement, we will not be prepared to approve such restrictions indefinitely. Stated differently, we believe the public interest requires that these fares eventually be available to all groups whether or not the members have some affinity with one another." <sup>61/</sup>

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<sup>59/</sup> Resolutions 076m, p. 1; 076p, p. 1.

<sup>60/</sup> The Board did not distinguish or even mention its earlier contrary decisions.

<sup>61/</sup> IATA Agreements re Passenger Fares, 38 C.A.B. 1062, 1073-74 (1963) (footnote omitted).

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In furtherance of this view, the Board has consistently disapproved IATA conditions limiting the numerical size of affinity groups.<sup>62/</sup> Not only, we note, is such a condition continued in the present resolution, but an additional restriction - i.e., a requirement of 2-years' prior existence - has been added.

With regard to the incentive group fares, it is difficult to imagine a fare more restricted in its availability. It is available only to dealers or employees of business corporations and then only those which have incentive travel programs. In substance, it is a fare created for the use of a comparative handful of large manufacturing corporations and their dealers or employees - almost a prototype of an unjustly discriminatory fare.

It is settled by the courts and under Board decisions that a passenger's business or status cannot be made the basis of a fare discrimination, at least in the absence of substantial justification based upon factors "which Congress has by statute deemed material and . . . which regulatory practice in the transportation industry has, through experience, found relevant." Transcontinental Bus System, Inc. v. CAB, 383 F.2d 466, 484 (5th Cir. 1962). See, e.g., Free and Reduced-Rate Transportation Case, supra; Capital Group Student Fares, 25 C.A.B. 280, 295 (1958); Frontier Airlines, Reduced Rate for Teachers, 38 C.A.B. 1148, 1150 (1963). Promotional considerations, it is clear, cannot suffice as a justification. Transcontinental Bus System, Inc. v. CAB, supra, 383 F.2d at 485; Group Excursion Fares Investigation, 25 C.A.B. 41, 46 (1957). And, surely, it cannot rationally be argued that it costs less to transport on a scheduled

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<sup>62/</sup> Ibid. at 1065; Order E-24823, March 6, 1967, p. 10.

flight a group of 50 persons with prior affinity than 50 persons without such affinity, or to transport a group of persons employed by a company with a travel incentive program than employees of a company without such a program.

The IATA carriers, we submit, have failed to demonstrate the existence of any valid factors which can justify limiting a discount fare to persons with prior affinity or to employees and dealers of a corporation with an incentive travel program.

b. Furthermore, the bulk, incentive and affinity group fares are unjustly discriminatory against individual-fare passengers because (i) the carriers have failed to demonstrate cost savings which would justify discounts of 50 per cent or more over economy fares and (ii) the restrictions imposed in connection with the bulk and group fares are not so serious as to justify discounts of the magnitude afforded.

As to the first point, we can assume arguendo that an IATA carrier will achieve some unit cost savings by selling in a block at one time space for 40 or more passengers, or even 20 or more westbound, on the bulk fares. But we doubt that the cost savings are nearly enough to justify discounts of 50-58 per cent off economy fares; and there is nothing in the IATA carriers' submissions which even remotely serves to establish that discounts of this magnitude are reasonably related to cost savings. Cf. Group Excursion Fares Investigation, supra.

Second, the disadvantages of using the bulk and group fares are comparatively modest when balanced against the size of the discount. In this regard, we note that all of the bulk and group fares provide guaranteed reservations; that the incentive and affinity group fares have no land tour requirement; that the affinity group fares have no limitation on length of

stay; and that the bulk fares have no blackout periods. To be sure, the fares do entail a variety of restrictions not imposed on individual passengers - e.g., minimum group size, early application and deposit, land tours (in the case of the bulk fares), and limitations on length of stay (in the case of the bulk and incentive group fares). But these restrictions do not, we submit, detract from the value of the service to a degree at all proportionate to the amount of the discount.

2. The bulk IT and also the GIT fares are unjustly discriminatory for a further reason. The Board held in Tour Basing Fares, 14 C.A.B. 257, 259 (1951), after a full evidentiary investigation:

"In our opinion, the tour basing fares represent an objectionable form of discrimination in that they embody essentials of a tie-in sale. The reduced-fare ticket can only be purchased if the passenger is willing to purchase hotel or other accommodations. Such discriminatory practices are a far cry from the equal treatment the public is normally entitled to expect from a public utility. Nothing in the promotional and competitive considerations advanced by the carriers is sufficient to justify such a discrimination."

See also Pan American, et al., Agreements, 18 C.A.B. 648, 649 (1954).

Contra: IATA Agreements re North Atlantic Fares, Order E-24823, March 6, 1967, p. 5. We submit that the grant of a substantial discount on air transportation to persons purchasing approved land tour accommodations constitutes an unwarranted discrimination in violation of the Act.

3. Resolution 015, Attachment D, provides for a \$130 proportional round-trip fare (or add-on to the New York fare) applicable to Los Angeles and San Francisco in connection with travel under the incentive group and some affinity group fares (40/50 passengers, effective November 1, 1969). The Los Angeles and San Francisco proportional was reduced from \$212, and similarly reduced proportionals were adopted for other California

points.<sup>63/</sup> The sharp reductions thus effected seem to be restricted to approximately fifteen points in California, while the proportional fares for the balance of the U.S. appear largely unchanged. The new bulk fare resolution likewise provides a \$130 Los Angeles/San Francisco proportional fare and, in addition, a \$160 proportional fare for Los Angeles and San Francisco passengers who desire a stopover in New York City.<sup>64/</sup> The proportional fare structure thus created is, we believe, an arbitrary one, unrelated to domestic fares and resulting in a host of unjustly discriminatory and/or unduly preferential situations.<sup>65/</sup> See Attachment "G" hereto.

Under Resolution 015, as we read it, a Los Angeles/London passenger traveling in the summer of 1970 with an affinity group of 25 will pay a \$290 proportional fare, or a total round-trip fare of \$590, while a passenger traveling with an affinity group of 50 will pay a \$130 proportional fare, or a total fare of not more than \$380. Similarly, a Los Angeles/London GIT fare passenger traveling with a group of 15 or more will pay a proportional fare of \$212 while a bulk IT passenger (group of 40 or more eastbound, 20 or more westbound) will pay only \$130. Further, an affinity group (50/40) passenger traveling New York/London in the peak

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<sup>63/</sup> Attachment D to Resolution 015. This attachment provides for proportional fares of \$154 from San Diego, reduced from \$236; \$152 from Sacramento, reduced from \$234; \$154 from Bakersfield, reduced from \$236; and \$150 from Monterey, reduced from \$220. See also Attachment C to Resolution 015.

<sup>64/</sup> Attachment B to Resolution 079a.

<sup>65/</sup> The seemingly arbitrary character of the proportional fare structure may well be explained by the IATA carriers' desire to capture the Los Angeles-Europe charter traffic of the supplementals. See TWA economic justification, Attachments V, VII.



season of both 1969 and 1970 will experience a \$5 increase in fare in 1970, while his counterpart traveling Los Angeles/London will experience a \$78 reduction.

The preferences to cities under Attachment D to Resolution 015 are certainly undue. The \$130 Los Angeles proportional fare may be compared with a \$216 fare for Albuquerque; \$192 for Denver; \$220 for El Paso; \$146 for New Orleans; and \$134 for Kansas City.

The \$160 proportional under the bulk fare resolution, which permits a New York stopover, raises another difficult set of legal issues. For example, unless interline arrangements are made, a large-scale diversion of international traffic to TWA from the other domestic trans-continental carriers would take place. Moreover, a Los Angeles/New York/London bulk fare passenger would in any event pay only \$160 for his Los Angeles/New York leg, but a domestic passenger on the same flights would pay at least \$217 under the lowest excursion fares. The instant proportional fares thus would have a substantial impact upon domestic air transportation which, even standing alone, would warrant a Board investigation.

E. The Bulk Fare Resolution Would Make the Tour Operator an Unauthorized Indirect Air Carrier in Violation of the Act.

It is long-settled that persons engaging in air transportation "directly or indirectly" must obtain authorization under, or exemption from, the licensing provisions of the Act (see Sections 101(3), 401). See also Railway Express Agency, Grandfather Certificate, 2 C.A.B. 531, 536-37 (1941). Further, the Board has consistently held that a person who contracts with an airline for space aboard an aircraft in order to organize



and market to the general public an inclusive air-land tour acts as an indirect air carrier. Trans Caribbean Airways, Inc., Order E-23548, April 20, 1966; Supplemental Air Service Proceeding, Order E-23350, March 11, 1966, mimeo. opin. at 16; Price, Disclaimer of Jurisdiction, 24 C.A.B. 805, 806 (1956); Hacienda Hotels - U.S. Aircoach Enforcement, 26 C.A.B. 372 (1958).

The terms of the bulk fare resolution (Resolution 079a) unquestionably render the tour operator or "contractor" an unauthorized indirect air carrier. Under the resolution, a tour operator would contract for a block of seats (at least 40 eastbound or 20 westbound) at the bulk fare price. He would be liable for the space whether it was used or not. The tour operator would promote and market air transportation to members of the general public as part of an inclusive tour costing at least \$100 (plus \$7 for each day above 14 days). Consistently with that minimum, he would establish the price for the inclusive tour and would himself bear the costs of promotion and advertising. The airline would pay no commission at all to the tour operator, whose entire profit from the transaction would consist of the difference between the tour price and his costs (i.e., air fare, cost of ground arrangements and promotional expense). Lastly, the tour operator, rather than the airline, would deal with and be responsible to the passengers. He would deliver their tickets and have sole responsibility for making any passenger refunds. Indeed, the airline would not be advised of the identities of the passengers until 48 hours prior to departure.

The instant situation, we submit, is on all fours with Trans Caribbean Airways, supra, where the Board found that "t/he proposed

arrangements between Trans Caribbean and the tour operator, and the undertakings assumed by the tour operator under the terms of the tariff, would render the tour operator an indirect air carrier" (Order E-23546, p. 2). In Trans Caribbean the airline proposed to lease to a tour operator the tourist compartment of an aircraft at a low per seat price for resale to the general public in conjunction with an inclusive tour. There, as here, the tour operator assumed the risk if he was unable to utilize the space contracted for, undertook promotional responsibilities and dealt with the passengers. And there, as here, the tour operator was free to fix the price of the tour above a fixed minimum, and his profit consisted of the margin between the tour price and his costs. The Board found that "the tour operator's undertaking to transport the tour participants is as principal for its own account and not as agent for Trans Caribbean" (p. 3). The Board concluded (ibid.):

"In short, the tour operator would act as a middleman - entrepreneur between the producer and ultimate user of the air transportation, assuming the risks and retaining the profits from the venture. The tour operator would be engaged indirectly in air transportation within the meaning of section 101(3) of the Act. Since, as stated above, no tour operator has been authorized to engage in indirect air transportation of persons when utilizing nonsupplemental air carriers, Trans Caribbean's tariff cannot be lawfully implemented and therefore will be rejected. 7/

"7/ This action is without prejudice to any appropriate request for authority to provide services of the type here involved."

As the Trans Caribbean order suggests, there is no basis for the grant in this proceeding of an exemption to tour operators who would use the bulk fare resolution. In the first place, there has not been "any appropriate request for authority." Second, the Board has historically been extremely reluctant to authorize indirect air carriage of persons.

See Price, Disclaimer of Jurisdiction, supra, 24 C.A.B. at 806, and authorities there cited; Hawaii-Tahiti Air Cruisers Exemptions, 24 C.A.B. 812 (1956). Certainly, there is not a demonstrated public need for such authorization here. Third, there is no record at all upon which to base the grant of an exemption or to formulate appropriate regulations.

In exempting tour operators in connection with inclusive tour charters under Part 378 of its Regulations, the Board acted on the basis of an exhaustive record and adopted detailed bonding, disclosure and other provisions designed to protect the public against potential improprieties by tour operators. See Supplemental Air Service Proceeding, supra, mineo. opin. at 16-21; Regulation No. SPR-14, adopted March 11, 1966. It can do no less here, since the terms of the resolution make clear that the airlines assume no financial responsibility to bulk fare passengers, and since the absence of restrictions upon bulk fare tour operators would itself put the supplementals at a severe competitive disadvantage.

In sum, we submit that the bulk fare resolution is adverse to the public interest because it provides for operations by unauthorized indirect air carriers in violation of Section 401 and further that there is no basis in fact or law for the grant of any such authorization in this proceeding.

#### CONCLUSION

We emphasize that while the record of the IATA conferences substantiates that the principal reason for adoption of low bulk fares was to counter the competition of the supplementals' inclusive tour charters, implementation of ITC authorizations has been thwarted by the

failure of many foreign countries to grant landing and uplift rights for the operation of such charters. Thus, at this time the competition which motivated the adoption of bulk fares has not developed and will not develop until such time as assured landing and uplift rights are granted to the supplementals. In addition, the terms and conditions of the bulk IT and group fares, as compared to the charters of the supplementals, are so broad that they would pose a grave threat to the supplementals' North Atlantic charter service, both ITC and affinity, unless the supplemental carriers are authorized to conduct inclusive tour and affinity charters under the same terms and conditions of carriage as the bulk and affinity group fares. The recent reported action of ECAC indicates that it may adopt criteria barring landing and uplift rights for ITC's unless the fare levels are identical to those of the bulk fares. Approval of the proposed bulk fares coupled with restrictions on ITC landing and uplift rights in the form of minimum fare levels would substantially stifle the competition of the supplementals and preclude implementation of the inclusive tour charter authority granted the supplemental carriers by the Board and the Congress.

Accordingly, for all of the foregoing reasons, the Board should, pursuant to Section 412(b), disapprove as adverse to the public interest or, at the least, withhold approval of the challenged IATA fare resolutions pending a full evidentiary investigation. The Board should also, pursuant to Section 1002(f), investigate whether the group, bulk and

proportional fares are unjustly discriminatory.

Respectfully submitted,

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SATURN AIRWAYS, INC.  
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April 4, 1969

## NYC-ION FARES AND CONDITIONS EFFECTIVE MAY 1 AND NOV. 1, 1969

Type of Fare	Present Fare Level	Proposed Fare Level	Effective Date	Period of Application	Stop-overs Allowed	Transatlantic Travel Allowed	Min/Max Duration	Minimum Payments Required	Affinity Required	Period of Application	Minimum Payments Required	Minimum Payments Required	Other Conditions
① First Class	OT 375.00 RT 712.50	OT 375.00 RT 750.00	5/1/69	All Year	Yes	Yes	1 Year	-	-	-	-	-	-
② Economy "Basic"	OT 210.00 RT 399.00	OT 210.00 RT 450.00	5/1/69	Year round except (1) May 27-Aug. 3 and (2) Jul 17-Sep. 26.	Yes	Yes	1 Year	-	-	-	-	-	-
③ Economy "Peak"	OT 255.00 RT 481.50	OT 255.00 RT 510.00	5/1/69	(1) May 27-Aug. 3 (2) Jul 17-Sep. 26	Yes	Yes	1 Year	-	-	-	-	-	-
④ 21-Day "Basic"	OT 300.00 RT 481.50	OT 300.00 RT 510.00	5/1/69	Year round except for travel originating (1) Jun 6-Jul 3 and Aug 4-Aug 21 (2) Jun 2-Jul 19 and Aug 18-Sep 4.	Yes	Yes	Min 14 days Max 21 days	-	-	-	-	-	-
⑤ 21-Day "Peak"	OT 350.00 RT 510.00	OT 350.00 RT 540.00	5/1/69	In effect (1) Jun 9-Jul 16 and Aug 21 (2) Jun 2-Jul 19 and Aug 18-Sep 4.	Yes	Yes	Min 14 days Max 21 days	-	-	-	-	-	-
⑥ 21-Day "Basic"	OT 210.00 RT 399.00	OT 210.00 RT 450.00	5/1/69	Same as Fare in ④ above.	Yes	Yes	Min 14 days Max 21 days	-	-	-	-	-	-
⑦ 21-Day "Peak"	OT 255.00 RT 481.50	OT 255.00 RT 510.00	5/1/69	Same as Fare in ⑤ above.	Yes	Yes	Min 14 days Max 21 days	-	-	-	-	-	-
⑧ G.I. "Basic"	OT 280.00 RT 481.50	OT 280.00 RT 510.00	5/1/69	Same as Fare in ④ above.	Yes	Yes	Min 14 days Max 21 days	-	-	-	-	-	-
⑨ G.I. "Peak"	OT 330.00 RT 510.00	OT 330.00 RT 540.00	5/1/69	Same as Fare in ⑤ above.	Yes	Yes	Min 14 days Max 21 days	-	-	-	-	-	-
⑩ G.I. "Basic"	OT 230.00 RT 399.00	OT 230.00 RT 450.00	4/1/70	Year round except for "Peak" periods shown in Application.	5	Yes	Min 14 days Max 21 days	-	-	-	-	-	-
⑪ G.I. "Peak"	OT 280.00 RT 481.50	OT 280.00 RT 510.00	4/1/70	(1) Jun 5-Jul 5, Jul 31-Aug 23 (2) May 29-Jun 21, Aug 14-Sep 6.	5	Yes	Min 14 days Max 21 days	-	-	-	-	-	-
⑫ Affinity Group	RT 300.00 RT 267.00 RT 215.00 RT 275.00 RT 267.00	RT 300.00 RT 267.00 RT 215.00 RT 275.00 RT 267.00	4/1/69	(1) Apr 1-Oct 31 (2) Nov 1-Mar 31 (3) Apr 1-Oct 31 (4) Nov 1-Mar 31	Yes Yes Yes Yes	Yes, except: Fri-Jun/July Fri-Aug/Sept.	1 Year 1 Year 1 Year 1 Year	25 25 50 15	Yes	30 days 30 days 30 days 30 days	100-30 days prior	100-30 days prior	Full payment must be made 21 days prior
⑬ Affinity Group	RT 300.00 RT 267.00 RT 215.00 RT 275.00 RT 267.00	RT 300.00 RT 267.00 RT 215.00 RT 275.00 RT 267.00	11/1/69	(1) Apr 1-Oct 31 (2) Nov 1-Mar 31 (3) Apr 1-Oct 31 (4) Nov 1-Mar 31	Yes Yes Yes Yes	Yes, except: Fri-Jun/July Fri-Aug/Sept.	1 Year 1 Year 1 Year 1 Year	25 25 50 15	Yes	30 days 30 days 30 days 30 days	100-30 days prior	100-30 days prior	Full payment must be made 21 days prior
⑭ Bulk "Basic"	RT 267.00 RT 200.00 RT 220.00 RT 190.00 RT 220.00 RT 190.00 RT 175.00	RT 267.00 RT 200.00 RT 220.00 RT 190.00 RT 220.00 RT 190.00 RT 175.00	11/1/69	(1) Jun 5-Jul 5, Jul 31-Aug 23 (2) Apr 1-Jun 4, Jul 6-Jul 31, Aug 21-Oct 31 (3) Nov 1-Mar 31 (4) Apr 1-Jun 4, Jul 6-Jul 31, Aug 21-Oct 31	3 3 3 3	Yes Yes Yes Yes	Min 14 days Max 21 days	40 40 40 20	No No No No	30 days 30 days 30 days 30 days	100-30 days prior	100-30 days prior	Full payment must be made 21 days prior
⑮ Incentive Group Fares	RT 212.00 RT 200.00 RT 212.00	RT 212.00 RT 200.00 RT 212.00	11/1/69	(1) Apr 1-May 31, Aug 10-Oct 31 (2) Nov 1-Mar 31 (3) Apr 1-Jun 30, Oct 1-Mar 31	No No No	Yes Yes Yes	Min 5 days Max 14 days	40 40 20	Only Corp. on Incentive Pro-	30 days 30 days 30 days	100-30 days prior	100-30 days prior	Full payment must be made 21 days prior



IATA CARRIERS - NORTH ATLANTIC COSTS<sup>1/</sup> AND YIELDS

Available seat-kilometer cost <sup>1/</sup>	1.60¢
Available seat-mile cost	2.57¢
Estimated passenger load factor <sup>1/</sup>	56%
Revenue passenger mile cost	4.59¢

Yields per passenger mile from proposed fares, based on NY-London miles (3,453):

	<u>Pro-Forma Fare<sup>2/</sup></u>	<u>Yield</u>
Normal	\$206	5.96¢
Family plan	98	2.84
Excursion - basic midweek	141	4.08
- peak midweek	165	4.78
Individual I.T. - basic midweek	124	3.59
- peak midweek	147	4.26
Group I.T. - basic	113	3.27
- peak	136	3.94
Affinity - 15/25	134	3.88
Affinity - 40/50	118	3.42
and Incentive	100	2.89
	95	2.75
Bulk -	104	3.01
	90	2.61
	83	2.40

<sup>1/</sup> IATA Cost Committee Report (JT/123MEET311) P. 22.  
Forecast for 1968-1969 and 1969-1970.

<sup>2/</sup> Pan American's economic justification, March 13, 1969, Attachment C.



Attachment "C"

PAN AMERICAN'S INCREASED REVENUE AS A RESULT  
OF THE ELIMINATION OF THE ROUND TRIP DISCOUNT

Revenue from normal-fare economy traffic <u>1/</u>	\$102,913,000
PAA estimate of revenue increase from elimination of round trip discount <u>2/</u>	4.2%
Increase in PAA revenue from elimination of round trip discount, based upon 1968 traffic	\$4,722,346

1/ Attachment "F".

2/ Pan American's economic justification, March 13, 1969, Attachment C.

GROWTH IN NORTH ATLANTIC SCHEDULED PASSENGER TRAFFIC  
IATA CARRIERS

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	<u>Revenue Passengers</u>	<u>Increase Over Previous Year</u>
1959	1,367,287	-
1960	1,760,772	28.8%
1961	1,919,434	9.0
1962	2,272,163	18.4
1963	2,422,267	6.6
1964	3,069,178	26.7
1965	3,611,274	17.7
1966	4,197,550	15.9
1967	4,987,433	18.8
1968	5,258,195	5.4

Ten-year increase      285%

Source: IATA Traffic Statistics.

PAN AMERICAN FARE-BASED STATISTICS - 1968  
NORTH, MID-ATLANTIC AND POLAR  
EASTBOUND AND WESTBOUND

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	<u>Revenue Passengers<sup>1/</sup></u>	<u>Revenue (\$000)<sup>1/</sup></u>	<u>Percentage of Non- Military Traffic</u>
Economy Class:			
Normal fare	518,745	102,913	61.7%
Excursion fare	232,706	32,745	27.7
Family fare	12,048	1,181	1.4
Group fare	32,236	3,861	3.8
Group I.T.	38,813	4,379	4.6
I.T.	6,705	831	.8
Military	<u>12,758</u>	<u>1,567</u>	-0-
Total	854,011	147,477	
Total excluding military		841,253	100.0%

Notes: Revenue: U.S. point and gateway.  
Category A and Z excluded.

<sup>1/</sup> Work sheet submitted by Pan American summarizing Fare Based Statistics submitted to CAB. Traffic variations from IATA statistics are not explained.

REVENUE PASSENGERS, CAPACITY AND LOAD FACTOR  
NORTH ATLANTIC SCHEDULED SERVICE, ECONOMY CLASS  
TWA AND PAN AMERICAN  
1968

	Pan American			TWA		
	Revenue Passengers	Seats Offered	Load Factor	Revenue Passengers	Seats Offered	Load Factor
<u>Eastbound</u>						
January	25,823	56,552	45.7%	20,676	43,625	47.4%
February	19,867	49,852	39.9	16,968	39,276	40.9
March	25,246	57,722	43.7	20,449	46,172	44.3
April	31,761	60,159	52.8	28,554	52,543	54.3
May	41,405	72,788	56.9	24,374	60,260	57.0
June	63,507	89,057	71.3	54,943	73,500	74.8
July	71,535	98,318	72.8	64,456	87,135	74.0
August	49,921	93,740	53.3	44,391	88,410	50.2
September	43,545	83,358	52.2	43,394	85,573	50.7
October	29,179	70,459	41.4	28,660	68,934	41.6
November	20,524	55,159	37.2	18,167	47,270	38.4
December	27,312	55,411	49.3	23,961	46,303	51.7
Total	449,632	842,575	53.4	398,073	739,001	53.9

REVENUE PASSENGERS, CAPACITY AND LOAD FACTOR  
NORTH ATLANTIC SCHEDULED SERVICE, ECONOMY CLASS  
TWA AND PAN AMERICAN  
1968

	Pan American			TWA		
	Revenue Passengers	Seats Offered	Load Factor	Revenue Passengers	Seats Offered	Load Factor
<u>Westbound</u>						
January	25,197	55,650	45.3%	19,056	43,884	43.4%
February	21,196	49,924	42.5	15,354	39,262	39.1
March	25,644	57,374	44.7	18,499	45,456	40.7
April	32,981	59,770	55.2	23,479	52,670	44.6
May	39,919	72,393	55.1	31,017	60,518	51.3
June	54,938	88,417	62.1	44,324	73,529	60.3
July	57,072	92,652	61.6	48,375	87,649	55.2
August	80,349	99,031	81.1	71,033	87,588	81.1
September	55,646	85,460	65.1	56,501	83,413	67.7
October	43,318	71,318	60.7	40,190	69,294	58.0
November	27,602	55,120	50.1	22,721	47,557	47.8
December	29,081	55,125	52.8	22,418	47,128	47.6
Total	492,943	842,234	58.5	412,967	737,948	56.0
Total, both directions	942,575	1,684,809	55.9%	811,040	1,476,949	54.9%

Source: IATA Monthly Statistics.

LOS ANGELES/LONDON ROUND-TRIP FARES  
BASED UPON LOS ANGELES PROPORTIONAL<sup>1/</sup>

<u>Fare</u>	<u>Summer 1969</u>		<u>Summer 1970</u>	
	<u>NY/LON</u>	<u>LAX PROP.</u>	<u>NY/LON</u>	<u>LAX PROP.</u>
Economy	\$510	\$290	\$510	\$290
14/21 Excursion	300	290	300-350	290
Individual I.T.	270	290	270-320	290
GIT (15 pax.)	230-280	212	238-288	212
Affinity (25 pax.)	300	290	300	290
Affinity (40/50 pax.)	245	212	212-250	130
Bulk I.T.	-	-	190-220	130 <u>2/</u>
Incentive	-	-	212	130 <u>2/</u>

1/ Resolution 015.

2/ Resolution 079a, Attachment B.

INDEX OF EXHIBITS TO OBJECTIONS AND  
COMPLAINT OF MEMBER CARRIERS OF THE  
NATIONAL AIR CARRIER ASSOCIATION

- NACA Exhibit 1      Composite and Joint Meetings of IATA Traffic Conferences, Passenger Resolutions (Finally Adopted) Dallas, January 1969
- NACA Exhibit 2      Composite and Joint Meetings of IATA Traffic Conferences, JT 12/JT 123 Fares, North and Mid-Atlantic, Dallas, January 1969
- NACA Exhibit 3      Undated TWA Document "Group Contract Space Proposals."
- NACA Exhibit 4      IATA Composite Passenger Conferences, Cannes, France, 19 September-28 October, 1968, Minutes
- NACA Exhibit 5      Subpoena of IATA for Production of Certain Documents; Subpoena of Pan American World Airways, Inc. for Production of Certain Documents; Subpoena of Trans World Airways for Production of Certain Documents; Subpoena of Seaboard World Airlines, Inc. for Production of Certain Documents
- NACA Exhibit 6      Application for Issuance of Subpoenas for Documentary Evidence
- NACA Exhibit 7      Memorandum Re IATA Agenda Submissions, May 20, 1968  
(this document is presently being withheld from public disclosure)
- NACA Exhibit 8      IATA Telegram to Edward J. Driscoll, President of NACA, Received March 24, 1969
- NACA Exhibit 9      Letter of Acting CAB Chairman Murphy, Dated August 19, 1968
- NACA Exhibit 10      Letter of CAB Chairman Crooker, Dated October 15, 1968
- NACA Exhibit 11      Letter of Pan American World Airways to CAB Chairman Crooker, Dated November 6, 1968 with Attachment  
(this document is presently being withheld from public disclosure)



NACA Exhibit 12	Conf. Doc. 524, Agenda Item 408, June 18, 1968
NACA Exhibit 13	Conf. Doc. 285, Agenda Item 408, June 18, 1968
NACA Exhibit 14	Conf. Doc. 289, Agenda Item 417, June 18, 1968
NACA Exhibit 15	Conf. Doc. 658, Agenda Item 417, June 18, 1968
NACA Exhibit 16	Report of the Charter Study Group as Submitted to the TAC, June 17, 1968 (this document is presently being withheld from public disclosure)
NACA Exhibit 17	Answering Memorandum to Memorandum Re IATA Agenda Submissions, May 20, 1968 (this document is presently being withheld from public disclosure)
NACA Exhibit 18	Conf. Doc. 1420, Agenda Item 743, June 18, 1968
NACA Exhibit 19	Conf. Doc. 756, Agenda Item 434, June 18, 1968
NACA Exhibit 20	Conf. Doc. 1052, Agenda Item 436, June 18, 1968
NACA Exhibit 21	Trans World Airways Memorandum Re Bulk Fares, Dated January 3, 1969
NACA Exhibit 22	Conf. Doc. 1056, Agenda Item 438, June 18, 1968
NACA Exhibit 23	IATA Minutes, JT12 & JT123, Reconvened Traffic Conferences, Dallas, January 8-February 1, 1968
NACA Exhibit 24	Conf. Doc. 752, Agenda Item 415, June 18, 1968
NACA Exhibit 25	IATA Report of the 1968 Cost Committee Meeting; Conf. Doc. 11, Agenda Item 7
NACA Exhibit 26	Undated Work Sheet of Pan American Summarizing Fare Based Statistics Submitted to the CAB (this document is presently being withheld from public disclosure)

NORTH ATLANTIC - SPECIAL EFFECTIVENESS RESOLUTION (TIE-IN)

JT12(39)001b (North Atlantic) Expiry Date: 31 March, 1971  
JT123(33)001b (via Atlantic except  
TC2 and TC3 via TC1) Type: A

RESOLVED,

that notwithstanding Resolution 001, the following Resolutions shall be come effective only if all resolutions become effective, provided that if any of such resolutions is disapproved or rescinded or a Government approval is deferred or withdrawn, all such resolutions shall be simultaneously voided, rescinded or deferred as the case may require, or if a Government approval expires as to any of these resolutions, all such resolutions expire:

(a) JT12(North Atlantic)

JT12(39)001b  
JT12(39)001d (N. Atlantic)  
JT12(39)001e  
JT12(39)014a  
JT12(39)015  
JT12(39)050  
JT12(39)054a  
JT12(39)060  
JT12(39)064a  
JT12(39)070d(080d)  
JT12(39)070t(080t)  
JT12(39)070x(080x)  
JT12(39)075h(088d)  
JT12(39)075hh(088dd)  
JT12(39)075i(088i)  
JT12(39)076e(088e)  
JT12(39)076m(088i)  
JT12(39)076p  
  
JT12(39)079a  
JT12(39)083b(084y)  
JT12(39)084a(087)  
JT12(39)084c(084L)  
JT12(39)084cc(084LL)  
JT12(39)100  
JT12(39)250  
JT12(39)810d

(b) JT123 (via Atlantic except  
TC2 and TC3 via TC1)

JT123(23)001b  
JT123(33)014a  
JT123(33)015  
JT123(33)050  
JT123(33)057a (Att. "A")  
JT123(33)060  
JT123(33)067a (Att. "A")  
JT123(33)070e(080e)  
JT123(33)076i(088t)  
JT123(33)076p  
JT123(33)083b(084y)  
JT123(33)084a(087)  
JT123(33)100  
JT123(33)250  
JT123(33)810d

Filing Period

(END)

Effective Date

24 February, 1969 -

1 May, 1969

24 April, 1969

## EXPEDITED

## INTERIM REVALIDATION - NORTH AND MID ATLANTIC

JT12(39)002g (North & Mid Atlantic)  
 JT123(33)002g (North & Mid Atlantic)  
 (Note 1)

Expiry Date : 31 March, 1970

Type : B

## RESOLVED,

that notwithstanding anything contained in resolutions heretofore adopted, the following resolutions are revalidated after their normal expiry dates of 31 March 1969 until 30 April 1969 or until the Resolutions adopted at Dallas in January 1969 become effective, whichever is later.

JT12(36)001b (N. Atlantic)	JT12(36)075hh(088dd)
JT12(36)001b (M. Atlantic)	JT12(36)076e(088n) (as amended)
JT12(36)001d	JT12(36)076f(088p) (as amended)
JT12(36)001e	JT12(36)076m(088i)
JT12(36)001h	JT12(36)083(084w)
JT12(28)014a (as amended)	JT12(36)083a(084y)
JT12(36)015	JT12(36)084a(087)
JT12(16)023a (as amended) (Att. "A" for	JT12(36)084c(084L)
N. Atlantic only)	JT12(36)084cc(084LL)
JT12(28)045 (as amended)	JT12(Mail 531)091c
JT12(Mail 428)050 (as amended)	JT12(Mail 428)094(096)
JT12(36)054a	JT12(36)094a(096a)
JT12(36)054b	JT12(Mail 428)095
JT12(36)054x	JT12(428)095b(095a)
JT12(36)060 (as amended)	JT12(36)095c(089) (as amended)
JT12(36)064a	JT12(36)095d(089b) (as amended)
JT12(36)064b	JT12(36)095e(089a) (as amended)
JT12(36)064x	JT12(8)150a (as amended)
JT12(36)070d(080d)	JT12(14)151a (as amended)
JT12(36)070f(080f)	JT12(28)200 (as amended)
JT12(36)070t(080t)	JT12(28)200g
JT12(Mail 429)070v(080v)	JT12(23)250 (as amended)
JT12(36)070x(080x)	JT12(33)310 (as amended)
JT12(36)070z(080z)	(N. Atlantic)
JT12(36)075h(088a)	JT12(36)311

Note 1 - JT123(33)012 (North & Mid Atlantic) - identical to JT12(39)002  
(North & Mid Atlantic except that the resolutions listed are :

JT123(30)001b	(N. Atlantic)	JT123(30)067a
JT123(30)001b	(N. Atlantic)	JT123(30)070a(080a)
JT123(30)001e		JT123(30)070f(080f)
JT123(30)001h		JT123(30)076i(088t) (as amended)
JT123(24)014a	(as amended)	JT123(30)083b (084y)
JT123(30)015		JT123(30)084a(087)
JT123(24)023a	(as amended) (Att. "A" for N. Atlantic only)	JT123(Mail 428)095a(095)
JT123(24)015	(as amended)	JT123(6)150a (as amended)
JT123(Mail 428)050 (as amended)		JT123(12)151a (as amended)
JT123(36)034t		JT123(24)200 (as amended)
JT123(30)057a		JT123(24)200g
JT123(30)060	(as amended)	JT123(27)30 (as amended) (N. Atlantic)
JT123(30)064		JT123(30)311

(END)

Filing Period

24 February 1969 -  
5 March 1969

Effective Date

15 March 1969

NORTH ~~AMERICAN~~ ATLANTIC PROPORTIONAL FARES - NORTH AMERICAN

## REVALIDATING AND AMENDING

JT12(39)015  
JT123(33)015

Expiry Date: 31 March, 1971

Type: A

## RESOLVED,

- (1) that North ~~AMERICAN~~ ATLANTIC Proportional Fares are set forth in the following attachments:

ATTACHMENT "A" - Proportional Fares for Construction of Normal fares;

ATTACHMENT "B" - Proportional Fares for Construction of ~~Emigrant~~  
JT12 only Family Fares, Excursion Fares, Individual  
Inclusive Tour ~~Basing~~ Fares, ~~and~~  
Affinity Group Fares (25 and 15 passengers). ~~and~~  
Military Excursion Fares.

ATTACHMENT "B" - Proportional Fares for Construction of Excursion  
JT123 only Fares, Individual Inclusive Tour ~~Basing~~ Fares,  
Affinity Group Fares (15 passengers) and Group  
Inclusive Tour ~~Basing~~ Fares.

ATTACHMENT "C" - Proportional Fares for Construction of Group  
JT12 only Inclusive Tour ~~Basing~~ Fares ~~and~~ \*, (Expiring  
31 October 1969)\* Affinity Group Fares (50 passengers)  
\*and (expiring 31 October 1969) Bulk Affinity/  
Incentive Group Fares-Portugal/Spain.\*

\*ATTACHMENT "D" - Effective 1 November 1969, Proportional Fares for  
construction of Affinity Group Fares (40/50  
Passengers) Incentive Group Fares and Bulk Affinity/  
Incentive Group Fares-Portugal/Spain.\*

- (2) that, subject to Resolution 0142, the proportional fares in Attachments hereto shall be used in constructing fares between points in North America specified therein, on the one hand, and points in TC2 and points in TC3 via TC2 on the other, as follows:

- (a) Normal First Class Fares - by combining over the specified construction point the first class fare established pursuant to Resolutions 0542 and 0572 with the applicable jet ~~or~~ propeller first class proportional fare, ~~as the case may be~~ set forth in ATTACHMENT "A";

- (b) Normal Economy Class Fares - by combining over the specified construction point the economy class fare established pursuant to Resolutions 066a and 067a with the applicable jet \*\*or--propeller\*\* economy class proportional fare, \*\*as-the-case-may be,\*\* set forth in ATTACHMENT "A";
- (c) Excursion Fares and Individual Inclusive Tour \*\*Basing\*\* Fares - by combining over the specified construction point the applicable Excursion Fare or Individual Inclusive Tour \*\*Basing\*\* Fare established pursuant to Resolutions \*070d\*(080d), \*070e\*(080e), \*070f\*(080f), \*070x\*(080x), \*083a\*(084y) and 083b\*(084y) \*and 095b(095a)\* with the applicable jet \*\*or-propeller\*\* proportional fare \*\*as-the-case-may-be,\*\* set forth in ATTACHMENT "B", \*Column 3; \*
- (d) \*\*Emigrant\*\* \*Family\* Fares - by combining over the specified construction point the applicable \*\*emigrant\*\* \*family\* fare established pursuant to Resolution \*\*4096\*\* \*091c\* with the applicable jet \*\*or-propeller-emigrant\*\* \*family\* proportional fare, \*\*as-the-case-may-be,\*\* set forth in ATTACHMENT "B", \*Columns 1 and 2, as the case may be;\*
- (e) Affinity Group Fares (25 and 15 passengers) - by combining over the specified construction point the applicable group fare established pursuant to Resolution \*076e\*(088n) ATTACHMENT "A" and Resolution \*076f\*(088t), with the applicable jet \*\*or-propeller\*\* group proportional fare, \*\*as-the-case-may-be,\*\* set forth in ATTACHMENT "B", \*Column 3;\*
- \* (f) Military Excursion Fares - by combining over the specified construction point the applicable military excursion fare established pursuant to Resolution 095(095) and 095b(095a) with the applicable jet excursion proportional fare set forth in ATTACHMENT "B", Column 3;\*
- (g) Group Inclusive Tour \*\*Basing\*\* Fares - by combining over the specified construction point the applicable group IT fare established pursuant to Resolution \*084a\*(087) with the applicable jet \*\*or-propeller\*\* group IT proportional fare, set forth in ATTACHMENT "B".

JT123 only

- \* (h) \* \* (i) \* Group Inclusive Tour, \*\*Basing\*\* Fares \*\*and\*\* \*, (expiring 1 October 1969) \* Affinity Group Fares (50 passengers) \* and (expiring 31 October 1969) Bulk Affinity/Incentive Group Fares (Portugal/Spain) \* - by combining over the specified construction point the applicable Group IT fare established pursuant to Resolution \*084a\*(087) or the applicable Affinity Group Fare established pursuant to Resolution \*076e\*(088n), ATTACHMENT "B", \*or the applicable Bulk Affinity/Incentive Group Fares established pursuant to Resolution 076e\* with

JT12 only



the applicable jet "non-proportionate" group IT/Affinity group proportional fare, "as-the-case-may-be," set forth in ATTACHMENT "C", "Column 1 or 2 as the case may be;"

\*(1) Effective 1 November 1969, Affinity Group Fares (40/50 Passengers), Incentive Group Fares (Portugal/Spain) - by combining over the specified construction point the applicable Affinity Group Fare established pursuant to Resolution 076a (080a) II (ATTACHMENT "E") or the applicable Incentive Group Fare established pursuant to Resolution 076b or the applicable Bulk Affinity/Incentive Group Fare established pursuant to Resolution 076c, with the applicable jet affinity or incentive group proportional fare set forth in ATTACHMENT "D".\*

- (3) that in the event a general U.S. or Canadian domestic or U.S. - Canada trans-border fare change is authorized by the government(s) concerned the Secretary "Traffic Conferences" "of-TC" shall convene a meeting of all interested Members within 10 days after the date upon which such change is so authorized, to reconstruct all the affected fares;
- (4) that in such reconstruction the group shall to the extent possible maintain the construction principles and relationship between fares existing as of the effective date of this resolution; provided that the group by unanimous agreement may depart from such principles with respect to any particular fare or fares;
- (5) that should the group be unable to reach unanimous agreement with respect to any particular fare or fares, such fare or fares shall be reconstructed at a level which will maintain the amount of undercut and relationship between fares existing as of the date on which the Secretary called the meeting;
- (6) that upon completion of the meeting, the Secretary shall circulate to all Conference Members a complete list of the proportional fares agreed, together with the agreed effective date;
- (7) that in the event of an increase in a U.S. or Canadian domestic or U.S. Canada trans-border fare not covered by Paragraph (3) above or Paragraph (11) of Resolution 014a, any Member may request upward adjustment of any affected proportional fare(s) by giving 60 days notice through the Secretary "Traffic Conferences" "of-TC". If any Member protests within 20 days, such increase need not come into effect;
- (8) that notwithstanding Paragraph (9) of Resolution 014a upon reduction of a U.S. or Canadian domestic fare or U.S.-Canada trans-border fare which influences a proportional fare specified herein, a Member may reduce such proportional fare in order to eliminate the under-cut by giving 45 days notice through the Secretary, "Traffic Conferences" "of-TC". If any Member protests such filing,



a meeting of interested Members shall be called not later than 10 days after such protest has been filed, in order to resolve any divergent views. If the divergent views are not resolved at the meeting, the proposing Member shall be free to introduce the lower proportional fare not earlier than the proposed effective date resulting from the original 45 days notice;

- (9) that in the event of a reduction in accordance with Paragraph (8), such lower proportional fare shall remain in effect only so long as the reduction in the domestic or trans-border fare remains in effect;

~~\*\* (10) - these propeller-proportional-fares shall be used in accordance with Paragraph (2) only when propeller service is used within the U.S. and/or Canada or between U.S. and Canada when a combination of jet and propeller services is used within the U.S. and/or Canada or between U.S. and Canada, the through propeller-proportional fare plus the difference between jet and propeller sector fares for the portion(s) travelled by jet services shall apply, provided that the through fare based on the combination of jet and propeller services need not be more than the through fare applicable for travel on jet services; \*\*~~

~~\*\* (11) \*\*~~ (10) that notwithstanding Sub-paragraphs (4)(a) of Resolution C14a, Economy Class Fares to/from unspecified points in the Continental United States shall be constructed over Boston or New York, whichever is lower;

~~\*\* (12) \*\*~~ (11) that except as provided in "the" Attachments ~~"A"~~ and ~~"B"~~ hereto, fare for transportation between points in the United States and Canada, other than points in California, Oregon and Washington, on the one hand, and points in TC2 or TC3, on the other, via points on the West Coast of North America or points common-rated therewith will be constructed by combining the appropriate fare between Los Angeles, San Diego, San Francisco, Sacramento, Portland, Seattle or Vancouver and the origin or destination in the United States or Canada with the appropriate fare between these cities and the origin or destination in Traffic Conference 2 and 3, whichever produces the lowest fare; provided that when a passenger travels from a point in Canada to a point in Traffic Conference 2 or 3 via Vancouver except as provided in ~~"the"~~ Attachments ~~"A"~~ and ~~"B"~~ hereto, the fare shall be calculated as the sum of the fare from the point concerned to Vancouver and the fare from Vancouver to the point concerned in Traffic Conferences 2 or 3;

~~\*\* (13) \*\*~~ (12) that, subject to Resolution C14a, specified proportional fares shown in the Attachments hereto and through trans-Atlantic fares based on such Attachments take precedence over any lower combination of intermediate fares applicable between the same points;

\*(14)\* \*(13)\* that, notwithstanding Resolution 001, this resolution shall be subject to the provisions of Resolution 001b, shall not come into effect unless Resolution 001b comes into effect, and shall remain in effect only so long as Resolution 001b shall remain in effect.

(ATTACHMENTS "A", "B", "C" and "D" published separately)

(END)

Filing Period  
24 February, 1969 -  
24 April, 1969

Effective Date  
1 May, 1969



## SPECIFIED PASSENGER FARE TABLES

J 1 12/123  
RESO. 015

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NO PASS ARE GROUP FARE, THROUGH AND IF GROUP BY FARE

ATTACHMENT C TO RESOLUTION	AREA	NORTH AMERICAN	CURRENCY
JET-100-123-133-134	NORTH ATLANTIC	PROPORTIONAL FARES	U S DOLLARS

COLUMN 1  
FOR TRAVEL TOGETHERCOLUMN 2  
FOR INDIVIDUAL TRAVEL

BETWEEN	AND AREA	ADD TO	ECONOMY	CONST.	NOTES	ECONOMY	CONST.	NOTES		
0043	BRIDGEVIEW	1	NYC	210.00	DAL	9	210.00	DAL	9	
0153	BALTIMORE	1	NYC	60.00	L		60.00	L		
0176	BALTIMORE	2	NYC	33.00	BTS		33.00	BTS		
		6	NYC	30.00	L		30.00	L		
0194	BALTIMORE	1	NYC	218.00	L		218.00	L		
0234	ALBANY, NY	1	NYC	24.00	L		24.00	L		
0290	BRATTLETON	1	NYC	184.00	L		184.00	L		
0305	AND-TRADE ALB					K			K	
0404	ATLANTA GA	1	NYC	102.00	L	4	102.00	L	4	
0617	AUGUSTA GA	1	NYC	92.00	L	4	92.00	L	4	
0677	AUSTIN TEX	1	NYC	184.00	L	5	184.00	L	5	
0726	BALTIMORE	6	NYC	235.00	LAX	T	290.00	L		
		9	NYC	219.00	LAX	T	272.00	L		
		6	NYC	276.00	LAX	T	290.00	L		
0767	BALTIMORE	1	NYC	40.00	L		40.00	L		
0785	BALTIMORE	3	NYC	39.00	BTS		39.00	BTS		
		6	NYC	46.00	BTS		46.00	BTS		
0816	BALTIMORE	1	NYC	194.00	L	3	194.00	L	3	
1119	BILLINGS MONT	1	NYC		-SEA	T	206.00	L		
1134	BIRMINGHAM AL	1	NYC	40.00	L/R		40.00	L/R		
1141	BIRMINGHAM ALA	1	NYC	112.00	L		112.00	L		
1153	BIRMINGHAM	1	NYC		-SEA	T	184.00	L		
1271	BRIDGEVIEW		NYC		-POX	T		-POX		
1320	BRIDGEVIEW	1	NYC	30.00	L		30.00	L		
1334	BRIDGEVIEW	1	NYC	76.00	L		76.00	L		
1347	BRIDGEVIEW	1	NYC	218.00	L	8	218.00	L	8	
1378	BUFFALO NY	1	NYC	48.00	L		48.00	L		
1424	BUFFALO NY	3	NYC	14.00	VUL/R		14.00	VUL/R		
		6	NYC	28.00	VUL/R		28.00	VUL/R		
1517	CALGARY ALB	1	VUL	70.00	BTS	5	203.60	L		
1737	CELESTIAL	1	NYC	112.00	L		112.00	L		
1749	CHARLESTON SC	1	NYC	68.00	L	4	68.00	L	4	
1760	CHARLESTON NY	1	NYC	68.00	L		68.00	L		
1794	CHARLOTTE NC	1	NYC	76.00	L	4	76.00	L	4	
1806	CHATTANOOGA	1	NYC	96.00	L		96.00	L		
1841	CHICAGO ILL	1	NYC	90.00	L		90.00	L		
1906	CINCINNATI OH	1	NYC	78.00	L		78.00	L		
1930	CLEVELAND OH	1	NYC	60.00	L		60.00	L		



## SPECIFIED PASSENGER FARE TABLES

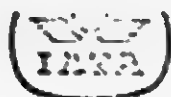
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90 PASS AFF GROUP (EXP. 31.10.69) AND IT GROUP BY FARE

ATTACHMENT C TO RESOLUTION JT12/39/JT12/33/015	AREA NORTH ATLANTIC	NORTH AMERICAN PROPORTIONAL FARES	CURRENCY U S DOLLARS
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COLUMN 1  
FOR TRAVEL TOGETHERCOLUMN 2  
FOR INDIVIDUAL TRAVEL

BETWEEN	AND AREA	ADD TO	ECONOMY	CONST.	NOTES	ECONOMY	CONST.	NOTES		
2072	COLORADO COL	1	NYC	192.00	L		192.00	L		
2076	COLUMBIA SC	1	NYC	86.00	L	A	86.00	L	A	
2078	COLUMBUS GA	1	NYC	108.00	L		108.00	L	A	
2070	COLUMBUS OH	1	NYC	70.00	L		70.00	L		
2104	CORONA ALA	1	ANC	32.00	L	T	32.00	L		
2126	CORPUS CH TEX	1	NYC	202.00	L	H	202.00	L	B	
2272	DALLAS TEX	1	NYC	168.00	L	B	168.00	L	B	
2322	DAYTON OH	1	NYC	76.00	L		76.00	L		
2323	DAYTONA B FLA	1	NYC	118.00	L	A	118.00	L	A	
2368	DENVER COL	1	NYC	192.00	L		192.00	L		
2376	DES MOINES IA	1	NYC	124.00	L		124.00	L		
2387	DETROIT MIC	1	NYC	68.00	L		68.00	L		
2573	EARLTON ONT	1	TUL	66.00	L		66.00	L		
2593	FARMINGTON ALB	1	TUL	70.00	ARB	S T	203.60	L		
2662	ELMIRA NY	1	NYC	48.00	L		48.00	L		
2671	EL PASO TEX	1	NYC	220.00	L		220.00	L		
2708	ERIE PA	1	NYC	68.00	L		68.00	L		
2741	EUGENE ORE	3	NYC	154.00	PDX	T	278.00	PDX		
		6	NYC	168.00	PDX	T	290.00	L		
2750	EVANSVILLE IND	1	NYC	98.00	L		98.00	L		
2761	FAIRBANKS ALA	1	ANC	70.00	L	T	70.00	L		
2796	FARGO ND	1	NYC	138.00	L		138.00	L		
2810	FLINT MIC	1	NYC	76.00	L		76.00	L		
2918	FT LAUDER FLA	1	NYC	144.00	L		144.00	L		
2976	FT MYERS FLA	1	NYC	138.00	L		138.00	L		
2929	FT NELSON BC	1	VEGO	88.80	L	N S T	88.80	L	N	
2942	FT ST JOHN BC	1	VEGO	57.40	L	N S T	57.40	L	N	
2948	FT SMITH ARK	1	NYC	148.00	L		148.00	L		
2941	FT WAYNE IND	1	NYC	78.00			78.00			
2963	FT WILLIA ONT	1	TUL		-TMC	S T	101.80	L		
2986	FT WORTH TEX	1	NYC		-DAL	S		-DAL	B	
2995	FREDERICTO NB	1	VOX	62.20	YH7	G	62.20	YH7	G	
3009	FRESNO CAL	4	NYC	242.00	SFO	T	290.00	L		
		5	NYC	224.00	SFO	T	272.00	DIFF		
		6	NYC	242.00	SFO	T	290.00	L		
3199	GLEN FALLS NY	7	NYC	22.00	TUL/R/		22.00	TUL/R/		
		6	NYC	36.00	TUL/R/		36.00	TUL/R/		
3282	GRAND FORK ND	1	NYC	138.00	L		138.00	L		



## SPECIFIED PASSENGER FARE TABLES

 V. 1. 1978  
 REV. 010

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NO PASS ARE GROUP (EXCL. 12,12,00) AND 17 GROUP BY FARE

ATTACHMENT C TO RESOLUTION JF12/19/21/23/25/27/29	AREA NORTH ATLANTIC	NORTH AMERICAN PROPORTIONAL FARES	CURRENCY U S DOLLARS
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COLUMN 1  
FOR TRAVEL TOGETHERCOLUMN 2  
FOR INDIVIDUAL TRAVEL

BETWEEN	AND AREA	ADD TO	ECONOMY	CONST.	NOTES	ECONOMY	CONST.	NOTES		
3298	GRAND JCT COI	1	NYC	218.00	L		218.00	L		
3291	GRAND RAP MI	1	NYC	84.00	L		84.00	L		
3300	GREAT FALL NY	1	NYC		=SEA	T	228.00	L		
3318	GREENSBORO NC	1	NYC	72.00	L		72.00	L		
3375	GREENVILLE SC	1	NYC	88.00	L		88.00	L	A	
3437	HAMILTON ONT				=VYZ			=VYZ		
3576	HARRISBURG PA	1	NYC	32.00	L		32.00	L		
3575	HARTFORD CT	1	NYC	21.00	905		21.00	875		
		8	NYC	28.00	875		28.00	875		
3617	HELE				=HNL	T		=HNL		
3680	HONOLULU HA	1	NYC	333.00	SEA	T	428.00	VUL		
		8	NYC	347.00	SEA	T	442.00	VUL		
3707	HUNTSVILLE ALA	1	NYC	187.00	L	9	180.00	L	9	
3722	HUNTSVILLE ALA	1	NYC	107.00	L		107.00	L		
3812	INDIANAPOLIS IN	1	NYC	86.00	L		86.00	L		
3945	ITHACA NY	1	NYC	48.00	L/R/		48.00	L/R/		
3981	JACKSON MS	1	NYC	140.00	L		140.00	L		
3985	JACKSONVILLE FLA	1	NYC	106.00	L	A	106.00	L	A	
4014	JAMESTOWN NY	1	NYC	58.00	L		58.00	L		
4015	JAMESTOWN NC	1	NYC	156.00	L		156.00	L		
4174	JUNEAU ALA					J T			J	
4249	KANSAS CITY MO	1	NYC	134.00	L		134.00	L		
4386	KETCHIKAN ALA					J T			J	
4490	KNOXVILLE TEN	1	NYC	86.00	L		86.00	L		
4775	LAKE PLACID NY				=PLB			=PLB		
4780	LANSING MIC	1	NYC	78.00	L		78.00	L		
4778	LAFAYETTE TEX	1	NYC	228.00	SAT	9	228.00	SAT	9	
4800	LAS VEGAS NEV	1	NYC		=LAT	T	266.00	L		
4876	LETHBRIDGE ALB	1	VUL	94.20	VYZ	S T	203.60	L		
0000	LEXINGTON KY	1	NYC	86.00	L		86.00	L		
4931	LINCOLN NEB	1	NYC	136.00	L		136.00	L		
4957	LITTLE ROCK ARK	1	NYC	138.00	L		138.00	L		
4999	LONDON ONT	1	VUL	84.80	L		84.80	L		
5006	LONG BEACH CAL	4	NYC	272.00	LAT	T	270.00	L		
		5	NYC	274.00	LAT	T	272.00	=LAT		
		6	NYC	272.00	LAT	T	270.00	L		
5028	LOS ANGELES CAL	4	NYC	272.00	APB	T	290.00	L		
		5	NYC	274.00	APB	T	272.00	DIFF		
		6	NYC	272.00	APB	T	290.00	L		



## SPECIFIED PASSENGER FARE TABLES

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90 PASS AFF GROUP (EXP. 31.10.69) AND IT GROUP RT FARE

ATTACHMENT C TO RESOLUTION	AREA	NORTH AMERICAN	CURRENCY
JT12/39/JT123/39/015	NORTH ATLANTIC	PROPORTIONAL FARES	U S DOLLARS

COLUMN 1  
FOR TRAVEL TOGETHER\* COLUMN 2  
\* FOR INDIVIDUAL TRAVEL

BETWEEN	AND AREA	ADD TO	ECONOMY	CONSTR.	NOTES	ECONOMY	CONSTR.	NOTES		
9034	LOUISVILLE KY	1	NYC	90.00	L		90.00	L		
9048	LUMBECK TEX	1	NYC	184.00	L		184.00	L		
9120	MACON GA	1	NYC	102.00	L		102.00	L		
9138	MADISON WIS	1	NYC	96.00	L		96.00	L		
9252	MANCHESTER NH	1	NYC	15.00	BNS		15.00	BNS		
		6	NYC	22.00	BNS		22.00	BNS		
9471	MASSENA NY	1	NYC	68.00	L/P/		68.00	L/P/		
9511	MENFORD ORE	3	NYC	168.00	PDX	T	290.00	L		
		6	NYC	182.00	PDX	T	290.00	L		
9513	MELBOURNE FLA	1	NYC	130.00	L		130.00	L		
9540	MEMPHIS TEN	1	NYC	124.00	L		124.00	L		
9557	MERCED CAL	4	NYC	239.00	SFO	T	290.00	L		
		5	NYC	220.00	SFO	T	272.00	LAX		
		6	NYC	238.00	SFO	T	290.00	L		
9590	MERIDA	1	NYC	200.00	ARB	U	200.00	ARB	U	
9563	MERIDIAN WIS	1	NYC	130.00	L		130.00	L		
9580	MEXICO CITY	1	NYC	222.00	ARB	U	222.00	ARB	U	
9583	MIAMI FLA	1	NYC	121.00	ARB	U	121.00	ARB	U	
9600	MIDLAND TEX	1	NYC	216.00	DAL		216.00	DAL		
9630	MILWAUKEE WIS	1	NYC	92.00	L		92.00	L		
9690	MINNEAPOLIS MIN	3	NYC	113.00	-SEA	T	122.00	L		
		6	NYC	122.00	L		122.00	L		
9706	MOBILE ALA	1	NYC	134.00	L		134.00	L		
9712	MODESTO CAL	4	NYC	234.00	SFO	T	290.00	L		
		5	NYC	216.00	SFO	T	272.00	LAX		
		6	NYC	234.00	SFO	T	290.00	L		
9775	MOLINE ILL	1	NYC	106.00	L		106.00	L		
9760	MONTGOMERY NB	1	YQX	49.20	YHZ	G	49.20	YHZ	G	
9791	MONROE LA	1	NYC	150.00	L		150.00	L		
9777	MONTREY CAL	4	NYC	232.00	SFO	T	290.00	L		
		5	NYC	214.00	SFO	T	272.00	LAX		
		6	NYC	232.00	SFO	T	290.00	L		
9783	MONTPELIER	1	NYC	220.00	ARB	U	220.00	ARB	U	
9797	MONTGOMERY ALA	1	NYC	120.00	L		120.00	L		
9798	MONTPELIER VT	3	NYC	31.00	BNS		31.00	BNS		
		6	NYC	38.00	BNS		38.00	BNS		
9961	MUSKOGEE WIS	1	NYC	88.00	L		88.00	L		
9064	NASHVILLE TEN	1	NYC	102.00	L		102.00	L		
9104	NEW BEDFORD MAS	3	NYC	19.00	BNS		19.00	BNS		
		6	NYC	26.00	BNS		26.00	BNS		
9124	NEW HAVEN CON	1	NYC	30.00	L		30.00	L		



## SPECIFIED PASSENGER FARE TABLES

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SA PASS AND GROUP (EXCL. 31.12.1993 AND 31.12.1994) FARE

ATTACHMENT C TO RESOLUTION JT12/39/JT12/33/015	AREA NORTH ATLANTIC	NORTH AMERICAN PROPORTIONAL FARES	CURRENCY U S DOLLARS
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COLUMN 1  
FOR TRAVEL TOGETHERCOLUMN 2  
FOR INDIVIDUAL TRAVEL

BETWEEN	AND AREA	ADD TO	ECONOMY	CONSTR.	NOTES	ECONOMY	CONSTR.	NOTES		
6130	NEW ORLEANS LA	1	NYC	146.00	L	B	146.00	L	B	
6140	NEWPORT NE VA	1	NYC	90.00	L		90.00	L		
6220	NOVATO CA	1	VUL	93.80	L		93.80	L		
6230	NOVATO CA	1	NYC	90.00	L		90.00	L		
6240	NORTH BAY TX	1	VUL	66.60	L		66.60	L		
6336	OAKLAND CAL	1	NYC		=LAX	T		=LAX		
6370	ODDENSE DEN				=WSS			=WSS		
6386	OKLAHOMA CITY OK	1	NYC	160.00	L	B	160.00	L	B	
6402	OHAMA NEB	1	NYC	136.00	L		136.00	L		
6409	ORLANDO FLA	1	NYC	122.00	L	A	122.00	L	A	
6481	OTTAWA ONT	1	VUL	20.40	L		20.40	L		
6591	PANAMA CI FLA	1	NYC	130.00	L		130.00	L		
6740	PENNINGTON ORE	1	NYC		=POX	T		=POX		
6755	PENSACOLA FLA	1	NYC	134.00	L		134.00	L		
6790	PHILADELPHIA PA	1	NYC	28.00	L		28.00	L		
6807	PHOENIX AZ	1	NYC		=LAX	T	256.00	L		
6859	PITTSBURGH PA	1	NYC	92.00	L		92.00	L		
6877	PLATTSBURGH NY	3	NYC	14.00	VUL/0/		14.00	VUL/0/		
		6	NYC	28.00	VUL/0/		28.00	VUL/0/		
7004	PORTLAND ME	3	NYC	23.00	BTS		23.00	BTS		
		6	NYC	30.00	BTS		30.00	BTS		
7006	PORTLAND OR	3	NYC	178.00	APB	T	252.00	=SEA		
		6	NYC	142.00	APB	T	266.00	=SEA		
7130	PRINCE GEO BC	1	VEG	68.60	L	N S T	68.60	L	N	
7132	PRINCE RUPERT	1	VEG	79.60	L	N S T	79.60	L	N	
7151	PROVIDENCE RI	3	NYC	17.00	BTS		17.00	BTS		
		6	NYC	24.00	BTS		24.00	BTS		
7241	QUEBEC CI QUE	1	VUL	27.80	L		27.80	L		
7250	QUESNEL BC	1	VEG	81.40	L	N S T	81.40	L	N	
7283	RALEIGH NC	1	NYC	68.00	L		68.00	L		
7345	REGINA SAS	1	VUL		=VEG	S T	176.00	L		
7361	RENO NEV	4	NYC	234.00	=SHF	T	288.00	L		
		5	NYC	216.00	=SHF	T	272.00	=LAX		
		6	NYC	236.00	=SHF	T	288.00	L		
7403	RICHMOND VA	1	NYC	92.00	L		92.00	L		
7470	ROCHESTER MIN	1	NYC	116.00	L		116.00	L		
7472	ROCHESTER NY	1	NYC	46.00	L		46.00	L		
7573	RUTLAND VT	3	NYC	20.00	VUL/0/		20.00	VUL/0/		
	SEE NEXT PAGE									





## SPECIFIED PASSENGER FARE TABLES

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90 PASS AFF GROUP (EXP. 31.10.69) AND IT GROUP RT FARE

ATTACHMENT C TO RESOLUTION JT12/19/JT123/33/015	AREA NORTH ATLANTIC	NORTH AMERICAN PROPORTIONAL FARES	CURRENCY U S DOLLARS
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COLUMN 1  
FOR TRAVEL TOGETHERCOLUMN 2  
FOR INDIVIDUAL TRAVEL

BETWEEN	AND AREA	ADD TO	ECONOMY	CONST.	NOTES	ECONOMY	CONST.	NOTES		
7535	RUTLAND VT	6	NYC	34.00	YUL/P/	34.00	YUL/P/			
7591	SACRAMENT CAL	4	NYC	234.00	SF7	290.00	L			
		5	NYC	216.00	SF3	272.00	=LAX			
		6	NYC	234.00	SF3	290.00	L			
7599	SAGINAW MIC	1	NYC	78.00	L	78.00	L			
7605	SAGUENAY QUE	1	YUL	42.60	L	42.60	L			
7635	SAINT JOHN NB	1	YQX	53.00	YHZ	53.00	YHZ	G		
7676	SALEM	3	NYC	148.00	PDX	272.00	PDX			
		6	NYC	162.00	PDX	286.00	PDX			
7679	ST JOHNS NF	1	YQX	24.20	L	24.20	L	M		
7649	ST LOUIS MO	1	NYC	108.00	L	108.00	L			
7664	ST PAUL MIN				=MSD		=MSD			
7702	SALT LAKE UT	1	NYC		=SHF	238.00	L			
7729	SAN ANGEL TEX	1	NYC	214.00	DAL	214.00	DAL			
7731	SAN ANTON TEX	1	NYC	192.00	L	192.00	L	B		
7752	SAN DIEGO CAL	4	NYC	236.00	LAX	290.00	L			
		5	NYC	218.00	LAX	272.00	=LAX			
		6	NYC	236.00	LAX	290.00	L			
7756	SANDSPIT BC	1	VVR	74.00	L	74.00	L	N		
7777	SAN FRAN CAL				=LAX		=LAX			
7848	SANTA BAR CAL	4	NYC	234.00	LAX	290.00	L			
		5	NYC	216.00	LAX	272.00	=LAX			
		6	NYC	234.00	LAX	290.00	L			
8004	SARANAC LA NY				=PLB		=PLB			
8006	SARASOTA FLA	1	NYC	134.00	L	134.00	L			
8016	SASKATOON SAS	1	YUL		=YEG	188.80	L			
8025	SAULT S MONT	1	YUL		=YWG	79.60	L			
8029	SAVANNAH GA	1	NYC	96.00	L	96.00	L			
8094	SEATTLE WN	3	NYC	113.00	SEA	252.00	YUL			
		4	NYC	127.00	SEA	266.00	YUL			
8113	SEVEN IS QUE	1	YUL	64.80	L	64.80	L			
8173	SHREVEPORT LA	1	NYC	158.00	L	158.00	L			
8274	SMITHERS BC	1	YEG	103.60	L	103.60	L			
8319	SOUTHEND INO	1	NYC	84.00	L	84.00	L			
8341	SPOKANE WN	3	NYC	113.00	=SEA	252.00	=SEA			
		6	NYC	127.00	=SEA	266.00	L			
8346	SPRINGFIE MAS				=BDL		=BDL			
8381	STEPHENVIL NF	1	YQX	35.20	L	35.20	L	M		
8404	STOCKTON CAL	4	NYC	232.00	SF7	290.00	L			
		5	NYC	214.00	SF7	272.00	=LAX			
		6	NYC	232.00	SF3	290.00	L			



## SPECIFIED PASSENGER FARE TABLES

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NO PASS BY OTHER FARE, MULTIPLE AND IT CAN BE FARE

ATTACHMENT C TO RESOLUTION	AREA	NORTH AMERICAN REGIONAL FARES	CURRENCY U.S. DOLLARS
JT12/20/23/JT12/23/23	NORTH ATLANTIC		

BETWEEN		AMT AREA	ADD TO	ECOMNY	CONSTR.	NOTES	ECOMNY	CONSTR.	NOTES		
				COLUMN 1 FOR TRAVEL TOGETHER			COLUMN 2 FOR INDIVIDUAL TRAVEL				
0611	CHICAGO MD	1	FUL	45.20	L		85.20	L			
0612	CHICAGO DC	1	FUL	45.80	L		51.80	L			
0613	CHICAGO NY	1	FUL	30.00	L		30.00	L			
0614	CHICAGO WA	1	FUL		+SEA	T		+SEA			
0615	CHICAGO MD	1	FUL	124.00	L		124.00	L			
0616	CHICAGO DC	1	FUL	130.00	L		130.00	L			
0617	CHICAGO NY	1	FUL	79.60	L	S T	79.60	L			
0618	CHICAGO WA	1	FUL	20.40	L		20.40	L			
0619	CHICAGO MD	1	FUL	100.00	L		100.00	L			
0620	CHICAGO DC	1	FUL	68.00	L		68.00	L			
0621	CHICAGO NY	1	FUL	46.40	L	V	46.40	L			
0622	CHICAGO WA	1	FUL	40.00	L	T M					
0623	CHICAGO MD	1	FUL		+LAX	T	250.00	L			
0624	CHICAGO DC	1	FUL	150.00	L		150.00	L			
0625	CHICAGO NY	1	FUL	40.00	L/P/		40.00	L/P/			
0626	CHICAGO WA	1	FUL	48.20	L		48.20	L			
0627	CHICAGO MD	1	FUL	173.00	APB	S T	244.20	L			
0628	CHICAGO DC	1	FUL	121.60	V/P	S T		+V/P			
0629	CHICAGO NY	1	FUL	244.00	LAX	T	240.00	L			
0630	CHICAGO WA	1	FUL	226.00	LAX	T	272.00	+LAX			
0631	CHICAGO MD	1	FUL	244.00	LAX	T	240.00	L			
0632	WASHINGTON DC	1	FUL	38.00	L		38.00	L			
0633	WASHINGTON NY	1	FUL	38.00	L		38.00	L			
0634	WASHINGTON LA FUL	1	VEGO	133.20	L		133.20	L			
0635	WASHINGTON SE FUL	1	FUL	138.00	L		138.00	L			
0636	WASHINGTON FUL	1	VEGO			S S T					
0637	WHITE PLAI NY	1	FUL	28.00	L/P/		28.00	L/P/			
0638	WICHITA KAN	1	FUL	152.00	L		152.00	L			
0639	WICHITA F TEX	1	FUL	180.00	L		180.00	L			
0640	WILLIAMS L BC	1	VEGO	92.40	L		92.40	L			
0641	WILMINGTON DE	1	FUL	32.00	L		32.00	L			
0642	WINDSOR CNT	3	FUL	82.00	+DTT		82.00	+DTT			
0643		6	FUL	68.00	+DTT		68.00	+DTT			
0644	WINNIPEG MAN	1	FUL	48.00	APB	S T	127.40	L			
0645	WORCESTER MAS	3	FUL	15.00	87%		15.00	87%			
0646		6	FUL	22.00	87%		22.00	87%			
0647	YAKIMA WA	1	FUL		+SEA	T		+SEA			
0648	YAKUTAT ALS	1	FUL		J T			J			



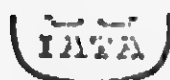
ATTACHMENT C TO RESOLUTION JT17/39/JT123/33/015	AREA NORTH ATLANTIC	NORTH AMERICAN PROPORTIONAL PAPES	CURRENCY U S DOLLARS
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COLUMN 1  
FOR TRAVEL TOGETHER

- COLUMN 2
- FOR INDIVIDUAL TRAVEL

BETWEEN		AND AREA	ADD TO	ECONOMY	CONSTR.	NOTES	ECONOMY	CONSTR.	NOTES		
9675	YAPPOUTH NS	1	YOK	54.80	YHZ	G	54.80	YHZ	G		
9642	YOUNGSTOWN OH	1	NYC	56.00	L		56.00	L			





## SPECIFIED PASSENGER FARE TABLES

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40/50 PASS AFF GROUP AND INCENTIVE GROUP RT FARES

ATTACHMENT D TO RESOLUTION JT12/39/JT123/33/015	AREA NORTH ATLANTIC	NORTH AMERICAN PROPORTIONAL FARES	CURRENCY U S DOLLARS
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FOR TRAVEL TOGETHER

FOR INDIVIDUAL TRAVEL

BETWEEN	AND AREA	ADD TO	ECONOMY	CONST.	NOTES	ECONOMY	CONST.	NOTES		
1950	CLEVELAND OH	1	NYC	60.00	L		60.00	L		
2077	COLORADO COL	1	NYC	192.00	L		192.00	L		
2076	COLUMBIA SC	1	NYC	86.00	L		86.00	L		
2078	COLUMBUS GA	1	NYC	109.00	L		109.00	L		
2070	COLUMBUS OH	1	NYC	70.00	L		70.00	L		
2174	CORONA ALA	1	ANC	32.00	L		32.00	L		
2126	CORPUS CH TEX	1	NYC	202.00	L		202.00	L		
2277	DALLAS TEX	1	NYC	168.00	L		168.00	L		
2327	DAYTON OH	1	NYC	76.00	L		76.00	L		
2323	DAYTONA B FLA	1	NYC	118.00	L		118.00	L		
2348	DENVER COL	1	NYC	192.00	L		192.00	L		
2376	DES MOINES IA	1	NYC	124.00	L		124.00	L		
2382	DETROIT MIC	1 6	NYC NYC	96.00 98.00	ARR L	Y	96.00 98.00	L L		
2571	EARLTON ONT	1	YUL	66.60	L		66.60	L		
2597	EDMONTON ALB	1	YUL	66.00	ARR	Y	207.60	L		
2667	ELmira NY	1	NYC	48.00	L		48.00	L		
2671	EL PASO TEX	1	NYC	220.00	L		220.00	L		
2708	ERIE PA	1	NYC	68.00	L		68.00	L		
2750	EVANSVILLE IND	1	NYC	98.00	L		98.00	L		
2761	FAIRBANKS ALA	1	ANC	70.00	L		70.00	L		
2786	FARGO ND	1	NYC	178.00	L		139.00	L		
2870	FLINT MIC	1	NYC	76.00	L		76.00	L		
2919	FT LAUDER FLA	1	NYC	144.00	L		144.00	L		
2926	FT MYERS FLA	1	NYC	138.00	L		138.00	L		
2929	FT NELSON BC	1	VEGO	88.80	L	N	88.80	L	N	
2942	FT ST JOHN BC	1	VEGO	97.40	L	N	97.40	L	N	
2948	FT SMITH ARK	1	NYC	148.00	L		148.00	L		
2961	FT WAYNE IND	1	NYC	78.00			78.00			
2963	FT WILLIA ONT	1	YUL		=YUL	Y	901.00	L		
2966	FT WORTH TEX	1	NYC		=DAL			=DAL		
2995	FREDERICTN NR	1	YBY	62.20	YH2	G	62.20	YH2	G	
3009	FRESNO CAL	6 4 A	NYC NYC NYC	140.00 142.00 160.00	SFO SFO SFO	Y Y X Y	290.00 272.00 240.00	L DIFF L		
3199	GLEN FALLS NY	3 6	NYC NYC	22.00 36.00	YUL/R/ YUL/R/		22.00 36.00	YUL/R/ YUL/R/		
3287	GRAND FORK ND	1	NYC	178.00	L		138.00	L		



## SPECIFIED PASSENGER FARE TABLES

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AD/AD PASS AND GROUP AND INCENTIVE GROUP RT FARES

ATTACHMENT D TO RESOLUTION	AREA	NORTH AMERICAN	CURRENCY
JT12/123/JT123/371214	NORTH ATLANTIC	PROPORTIONAL RATES	U.S. DOLLARS

FOR TRAVEL TOGETHER

FOR INDIVIDUAL TRAVEL

BETWEEN	AND AREA	ADD TO	ECONOMY	CONST.	NOTES	ECONOMY	CONST.	NOTES
1799	GRAND JCT CO	1	NYC	219.00	L	219.00	L	
1801	GRAND RAP ID	1	NYC	84.00	L	84.00	L	
1798	GRAND RAP ID	1	NYC	172.00	NYC	228.00	L	
		0	NYC	216.00	NYC	228.00	L	
1798	GREENSBORO NC	1	NYC	72.00	L	72.00	L	
1795	GREENVILLE SC	1	NYC	88.00	L	88.00	L	
1607	HAMILTON ONT				NYC		NYC	
1574	HARTFORD CT	1	NYC	32.00	L	32.00	L	
1575	HARTFORD CT	3	NYC	21.00	805	21.00	805	
		0	NYC	28.00	805	28.00	805	
1617	HILL				NYC		NYC	
1649	HUNTSVILLE ALA	3	NYC	129.00	SEA	429.00	YUL	
		0	NYC	179.00	SEA	442.00	YUL	
1772	HUNTSVILLE ALA	1	NYC	147.00	L	140.00	L	
1772	HUNTSVILLE ALA	1	NYC	102.00	L	102.00	L	
1812	INDIANAPOLIS IN	1	NYC	86.00	L	86.00	L	
1844	ITHACA NY	1	NYC	48.00	L/R	48.00	L/R	
1881	JACKSON MS	1	NYC	140.00	L	140.00	L	
1741	JACKSON MS	1	NYC	156.00	805	278.00	805	
		0	NYC	156.00	805	290.00	L	
1885	JACKSON MS	1	NYC	106.00	L	106.00	L	
4014	JACKSON MS	1	NYC	58.00	L	58.00	L	
4015	JACKSON MS	1	NYC	156.00	L	156.00	L	
4174	JUNEAU ALA				J			J
4749	KANSAS CITY MO	1	NYC	134.00	L	134.00	L	
4386	KETCHIKAN ALA				J			J
4690	KNOXVILLE TEN	1	NYC	86.00	L	86.00	L	
4775	LAKE PLACID NY				NYC		NYC	
4780	LANSING MIC	1	NYC	78.00	L	78.00	L	
4778	LAPORTE TEX	1	NYC	228.00	SAT	228.00	SAT	
4900	LAS VEGAS NEV	4	NYC	176.00	LAX	244.00	L	
		5	NYC	158.00	LAX	244.00	L	
		0	NYC	176.00	LAX	244.00	L	
4876	LETHBRIDGE ALB	1	YUL	80.20	NYC	203.40	L	
0000	LEXINGTON KY	1	NYC	86.00	L	86.00	L	
4931	LINCOLN NEB	1	NYC	136.00	L	136.00	L	
4951	LITTLE ROCK ARK	1	NYC	138.00	L	138.00	L	
4999	LONDON INT	8	YUL	95.40	YUL	84.90	L	
5006	LOS ANGELES CAL	4	NYC	150.00	LAX	290.00	L	
	SEE NEXT PAGE							



## SPECIFIED PASSENGER FARE TABLES

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40/50 PASS AFF GROUP AND INCENTIVE GROUP RT FARES

ATTACHMENT D TO RESOLUTION	AREA	NORTH AMERICAN	CURRENCY
JT12/39/JT123/33/015	NORTH ATLANTIC	PROPORTIONAL FARES	U.S. DOLLARS

FOR TRAVEL TOGETHER

• FOR INDIVIDUAL TRAVEL

BETWEEN	AND AREA	ADD TO	ECONOMY	CONST.	NOTES	ECONOMY	CONST.	NOTES		
9006	LONG BEACH CAL	5	NYC	132.00	LAY	Y X	272.00	•LAV		
		6	NYC	150.00	LAX	Y	290.00	L		
9029	LOS ANGELES CAL	4	NYC	130.00	APB	Y	290.00	L		
		5	NYC	112.00	APB	Y X	272.00	•DIFF		
		6	NYC	130.00	APB	Y	290.00	L		
9036	LOUISVILLE KY	1	NYC	90.00	L		90.00	L		
9048	LUBBOCK TEX	1	NYC	184.00	L		184.00	L		
9129	Macon GA	1	NYC	102.00	L		102.00	L		
9178	MADISON WIS	1	NYC	96.00	L		96.00	L		
9292	MANCHESTER NH	3	NYC	15.00	BDS		15.00	BDS		
		6	NYC	22.00	BDS		27.00	BDS		
9477	MASSENA NY	1	NYC	68.00	L/R/		68.00	L/R/		
9513	MELBOURNE FLA	1	NYC	130.00	L		130.00	L		
9540	MEMPHIS TEN	1	NYC	124.00	L		124.00	L		
9552	MERCEN CAL	4	NYC	156.00	SFO	Y	290.00	L		
		5	NYC	173.00	SFO	Y X	272.00	•LAV		
		6	NYC	156.00	SFO	Y	290.00	L		
9559	MERIDA	1	NYC	200.00	APB		200.00	APB		
9563	MERIDIAN WIS	1	NYC	130.00	L		130.00	L		
9580	MEXICO CITY	1	NYC	222.00	APB		222.00	APB		
9583	MIAMI FLA	1	NYC	121.00	APB		121.00	APB		
9600	MIDLAND TEX	1	NYC	216.00	DAL		216.00	DAL		
9630	MILWAUKEE WIS	1	NYC	92.00	L		92.00	L		
9650	MINNEAPOLIS MIN	1	NYC	105.00	•SEA	Y	122.00	L		
		6	NYC	119.00	•SEA	Y	122.00	L		
9706	MOBILE ALA	1	NYC	134.00	L		134.00	L		
9712	MONTFISTON CAL	4	NYC	152.00	SFO	Y	290.00	L		
		5	NYC	174.00	SFO	Y X	272.00	•LAV		
		6	NYC	152.00	SFO	Y	290.00	L		
9725	MOLINE ILL	1	NYC	106.00	L		106.00	L		
9740	MONTICOMI NB	1	VOX	49.70	VMZ	G	49.20	VMZ	G	
9751	MONTREAL LA	1	NYC	150.00	L		150.00	L		
9777	MONTREY CAL	4	NYC	150.00	SFO	Y	290.00	L		
		5	NYC	172.00	SFO	Y X	272.00	•LAV		
		6	NYC	150.00	SFO	Y	290.00	L		
9811	MONTROSE ORE	1	NYC	170.00	POX	Y	290.00	L		
9843	MONTREY	1	NYC	220.00	APB		220.00	APB		
9892	MONTGOMERY ALA	1	NYC	120.00	L		120.00	L		
9898	MONTPELLIER VT	3	NYC	31.00	BDS		31.00	BDS		
		6	NYC	38.00	BDS		38.00	BDS		
9967	MUSKOGEE WIC	1	NYC	88.00	L		88.00	L		





## SPECIFIED PASSENGER FARE TABLES

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40/50 PASS AFF GROUP AND INCENTIVE GROUP RT FARES

ATTACHMENT C TO RESOLUTION J712/39/J123/33/01A	AREA NORTH-ATLANTIC	NORTH AMERICAN PROPORTIONAL FARES	CURRENCY U S DOLLARS
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FOR TRAVEL TOGETHER

FOR INDIVIDUAL TRAVEL

BETWEEN	AND AREA	ADD TO	ECONOMY	CONSTR.	NOTES	ECONOMY	CONSTR.	NOTES		
6095	NASHVILLE TEN	1	NYC	102.00	L		102.00	L		
6179	NEW BEDFORD MAS	3	NYC	19.00	875		19.00	805		
		6	NYC	26.00	805		26.00	875		
6124	NEW HAVEN CTN	1	NYC	30.00	L		30.00	L		
6130	NEW ORLEANS LA	1	NYC	146.00	L		146.00	L		
6140	NEWPORT NE VA	1	NYC	90.00	L		90.00	L		
6224	NEWPORTS OUE	1	TUL	53.00	L		53.00	L		
6237	NOTFORD VA	1	NYC	90.00	L		90.00	L		
6248	NORTH BAY ONT	1	TUL	66.00	L		66.00	L		
6274	NORLAND CAL	1	NYC		PLAT			PLAT		
6373	NORFOLK VA				MS			MS		
6396	NORFOLK VA	1	NYC	160.00	L		160.00	L		
6402	NORFOLK VA	1	NYC	136.00	L		136.00	L		
6448	NORLAND FLA	1	NYC	122.00	L		122.00	L		
6481	NORLAND ONT	1	TUL	20.40	L		20.40	L		
6501	NORLAND FLA	1	NYC	130.00	L		130.00	L		
6749	NORFOLK VA	3	NYC	145.00	SEA			POX		
		6	NYC	169.00	SEA			POX		
6753	NORFOLK FLA	1	NYC	134.00	L		134.00	L		
6799	PHILADELPHIA PA	1	NYC	28.00	L		28.00	L		
		4	NYC	186.00	LAX		256.00	L		
6877	PHOENIX AZ	3	NYC	168.00	LAX		254.00	L		
		6	NYC	186.00	LAX		256.00	L		
6899	PITTSBURGH PA	1	NYC	52.00	L		52.00	L		
6877	PLATTSBURGH NY	3	NYC	14.00	TUL/8/		14.00	TUL/8/		
		6	NYC	28.00	TUL/8/		28.00	TUL/8/		
7004	PORTLAND ME	3	NYC	23.00	875		23.00	875		
		6	NYC	30.00	875		30.00	875		
7074	PORTLAND ME	3	NYC	130.00	SEA		252.00	SEA		
		6	NYC	130.00	SEA		264.00	SEA		
7130	PRINCE GEORGE BC	1	VEGO	68.00	L		68.00	L		
7132	PRINCE GEORGE	1	VEGO	79.00	L		79.00	L		
7151	PROVIDENCE RI	3	NYC	17.00	875		17.00	875		
		6	NYC	24.00	875		24.00	875		
7241	QUEBEC CI GUF	1	TUL	27.00	L		27.00	L		
7250	QUESNEL BC	1	VEGO	81.00	L		81.00	L		
7243	RALEIGH NC	1	NYC	68.00	L		68.00	L		
7348	REGINA SAS	1	TUL		VEGO		174.00	L		
7341	RENO NEV	4	NYC	148.00	SEA		240.00	L		
	SEE NEXT PAGE									



## SPECIFIED PASSENGER FARE TABLES

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AD/50 PASS AFF GROUP AND INCENTIVE GROUP BY FARES

ATTACHMENT D TO RESOLUTION JT12/39/JT12/33/015	AREA NORTH ATLANTIC	NORTH AMERICAN PROPORTIONAL FARES	CURRENCY U.S. DOLLARS
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FOR TRAVEL TOGETHER

• FOR INDIVIDUAL TRAVEL

BETWEEN	AND AREA	ADD TO	ECONOMY	CONST.	NOTES	ECONOMY	CONST.	NOTES		
7301	BUFFALO	5 6	NYC NYC	150.00 165.00	SF7 SF7	X V V	272.00 288.00	-LAX L		
7473	RICHMOND VA	1	NYC	52.00	L		52.00	L		
7470	ROCHESTER MIN	1	NYC	116.00	L		116.00	L		
7472	ROCHESTER NY	1	NYC	46.00	L		46.00	L		
7573	ROULAND VT	2 A	NYC NYC	70.00 74.00	VUL/P/ VUL/P/		20.00 34.00	VUL/P/ VUL/P/		
7501	SACRAMENTO CAL	4	NYC	152.00	SF7	V	290.00	L		
		5 6	NYC NYC	176.00 192.00	SF7 SF7	V X V	272.00 290.00	-LAX L		
7509	SAGINAW MIC	1	NYC	78.00	L		78.00	L		
7605	SAGUENAY QUE	1	VUL	42.60	L		42.60	L		
7676	SALEM	2 6		150.00 150.00	POX POX	V V	272.00 286.00	POX POX		
7635	SARAT SPRING NY	1	VOX	51.00	VM2	G	53.00	VM2	G	
7679	ST JOHNS NF	1	VOX	74.20	L	H	24.20	L	H	
7649	ST LOUIS MO	1	NYC	108.00	L		108.00	L		
7664	ST PAUL MIN				WSP	V		WSP		
7702	SALT LAKE UT	3 6	NYC NYC	274.00 279.00	WFA WFA	V V	238.00 238.00	L L		
7720	SAN ANGELO TEX	1	NYC	214.00	DAL		214.00	DAL		
7731	SAN ANTON TEX	1	NYC	192.00	L		192.00	L		
7752	SAN DIEGO CAL	4	NYC	154.00	LAX	V	290.00	L		
		5 6	NYC NYC	176.00 192.00	LAX LAX	V X V	272.00 290.00	-LAX L		
7746	SANDSPIT PC	1	VVR	74.00	L	V M	74.00	L	M	
7777	SAN PEDRO CAL				-LAX	V		-LAX		
7848	SANTA PAO CAL	4 5 6	NYC NYC NYC	152.00 176.00 192.00	LAX LAX LAX	V V X V	290.00 272.00 290.00	L -LAX L		
8004	SARASOTA FLA				-PLR			-PLR		
8006	SARASOTA FLA	1	NYC	176.00	L		176.00	L		
8016	SARASOTA FLA	1	VUL		-VEG	V	188.00	L		
8025	SAULT STE MARIE	1	VUL		-VUC	V	79.60	L		
8029	SAVANNAH GA	1	NYC	96.00	L		96.00	L		
8054	SEATTLE WA	3 6	NYC NYC	175.00 179.00	APB APB	V V	252.00 266.00	VUL VUL		
8113	SEVEN IS QUE	1	VUL	84.80	L		84.80	L		
8173	SHREVEPORT LA	1	NYC	158.00	L		158.00	L		
8274	SMITHS BC	1	VEG	103.60	L		103.60	L		
8319	SOUTH BEND IN	1	NYC	94.00	L		84.00			





## SPECIFIED PASSENGER FARE TABLES

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40/50 PASS AFF GROUP AND INCENTIVE GROUP RT FARES

ATTACHMENT D TO RESOLUTION JT12/39/JT123/31/015	AREA NORTH ATLANTIC	NORTH AMERICAN PROPORTIONAL FARES	CURRENCY U S DOLLARS
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FOR TRAVEL TOGETHER

• FOR INDIVIDUAL TRAVEL

BETWEEN		AND AREA	ADD TO	ECONOMY	CONST.	NOTES	ECONOMY	CONST.	NOTES		
9528	WINDSOR ONT	6	VUL	68.00	WDTT		68.00	WDTT			
9572	WINNIPEG MAN	1	VUL	45.00	ARB	Y	127.80	L			
9566	WORCESTER MAS	1	NYC	15.00	B7S		15.00	B7S			
		6	NYC	22.00	B7C		22.00	B7S			
9607	YAKIMA WA	1	NYC	135.00	SEA	Y		WSEA			
		6	NYC	149.00	SEA			WSEA			
9609	YAKUTAT ALS					J				J	
9625	YARMOUTH NS	1	YOK	94.80	YHZ	G	94.80	YHZ	G		
9642	YOUNGSTOWN OH	1	NYC	56.00	L		56.00	L			

## NORTH ATLANTIC 21-DAY EXCURSION FARES

## REVALIDATING AND AMENDING

JT12(39)070a (060a)

Expiry Date: 31 March, 1971

Type: A, except for individual fares which are Type B

## RESOLVED.

(1) that subject to Resolution<sup>s</sup> 011a, ~~and to the conditions of Resolutions~~ 060 and 060a, 21-day excursion fares for round or circle trips, the outbound and inbound portions of which are flown over the ~~North~~ Atlantic in economy class, may be established for transportation between points in the U.S.A., Canada and Mexico on the one hand and points in TC2 on the other, subject to the following conditions:

- (a) that such fares shall not be less than the applicable amounts shown in the ATTACHMENT<sup>S</sup> ~~LA~~ hereto;
- (b) that the fares in ATTACHMENT "A" shall ~~be valid all year except for outbound transatlantic travel commenced during the following periods~~ apply to travel at any time of the year except as provided in sub-paragraphs (c) and (d) below:
- (c) that, except as provided in Sub-paragraph (d) below, the fares in ATTACHMENT "B" shall apply when outbound transatlantic travel commences during the following periods:

(i) travel originating in U.S./Canada/Mexico (Eastbound):

~~1967~~ 1969

~~12~~ 9 June - ~~6~~ 3 July inclusive

~~7~~ 4 August - ~~24~~ 21 August inclusive

~~1968~~ 1970

~~10~~ 5 June - ~~4~~ 5 July inclusive

~~5~~ 31 ~~August~~ July - ~~22~~ 23 August inclusive

(ii) travel originating in TC2 (Westbound):

~~1967~~ 1969

~~5~~ 2 June - ~~22~~ 19 June inclusive

~~21~~ 18 August - ~~7~~ 4 September inclusive

~~\*\*19/80\*\* 1970\*\*~~

~~\*\*3\*\* 22\*\* June\*\* May\*\* - \*\*21\*\* June inclusive~~  
~~\*\*19\*\* 14\*\* August - \*\*9\*\* 6\*\* September inclusive~~

~~\*(d)\*~~ ~~\*\*provided-that\*\*~~ ~~\*that when\*~~ travel across the transatlantic sectors ~~\*\*shall-not-be\*\*~~ ~~\*is\*~~ commenced between 0700 hours local time on Friday and 0700 hours local time on Monday; ~~\*the applicable fare(s) in the Attachments hereto shall be subject to a surcharge of \$30 (U.S.) if such travel is in one direction and a surcharge of \$60 (U.S.) if such travel is in both directions.\*~~

~~\*\*{e}\*\*~~ ~~\*(e)\*~~ that return (inbound) transatlantic travel shall be permissible at any time, subject to the weekend provision of Sub-paragraph ~~\*\*{b}\*\*~~ ~~\*(d)\*~~ above and the provisions of Sub-paragraph ~~\*\*{e}\*\*~~ ~~\*(f)\*~~ below;

~~\*\*{d}\*\*~~ ~~\*(f)\*~~ that return travel on the flight coupon covering the transatlantic portion shall not be commenced prior to the 14th day after the date of commencement of outbound transatlantic travel shown on the flight coupon concerned and all travel shall be completed by midnight of the 21st day after the date of commencement of travel from point of origin; ~~\*\*that notwithstanding-the-above\*\*~~ ~~\*provided that:~~

~~(i)\*~~for westbound originating traffic destined to Gander, Newfoundland and for eastbound originating traffic destined to Keflavik, all travel under the Excursion Fare shall be completed by midnight of the 22nd day after the date of commencement of travel from the point of origin ~~\*\*and-provided-further-that\*\*~~ ~~\*and~~

~~(ii)\*~~for traffic originating in Keflavik, return travel on the flight coupon covering the transatlantic portion, shall not be commenced prior to the 13th day after the date of commencement of outbound travel shown on the flight coupon concerned.

~~\*\*{c}\*\*~~ ~~\*(g)\*~~ that, subject to Resolution 014a, fares specified between two points in any Attachment hereto take precedence over any lower combination of intermediate fares applicable between the same points;

~~\*\*{f}\*\*~~ ~~\*(h)\*~~ that such fares may be used in combination ~~\*only\*~~ with:

~~\*(i)\*~~the excursion proportional fares in ATTACHMENT "B" to Resolution 015 and/or

~~\*(ii)\*~~fares within the area ~~\*\*encompassing\*\*~~ ~~\*comprised of\*~~ the U.S.A., Canada and Mexico, subject to Paragraph (22) of Resolution 014a and ~~\*\*or\*\*~~ ~~\*with\*~~

~~\*(iii)\*~~normal TC2 or JT23 fares;

\*~~(1)~~ (1) that no combination of such fares with other fares shall not be used to alter the period of validity as provided in Sub-paragraph (1)(a) ~~or (f)~~ above, nor shall half of such round trip fares be used to construct other types of round or circle trips. ~~Never-the-North-Atlantic~~\*\*

\*~~(2)~~ (2) that sales of such fares in 1961 shall be limited to the U.S.A., Canada and Mexico;

\*~~(3)~~ (3) that such fares shall not be used for construction of around-the-world fares.

\*~~(4)~~ (4) that ~~the provisions of~~ nothing in Resolutions 303 and 304 ~~shall apply to~~ the reductions referred to in such resolutions may be applied to such fares\*\*

\*~~(5)~~ (5) that normal cancellation (voluntary or involuntary) and refund procedures shall apply, provided that no action is taken which in the case of voluntary cancellation or refund results in a passenger obtaining one-way, round or circle trip transportation at less than the applicable one-way, round or circle trip fare;

\*~~(6)~~ (6) ~~that fares established pursuant to the above provisions may be applied via mid-Atlantic routing subject to the provisions of Resolution 3004~~\*\*

\*~~(7)~~ (7) that notwithstanding anything in Sub-paragraph (1) ~~or (f)~~ (f) above, the period of validity in connection with these fares shall not be referred to in any advertising or publications as more than 21 days.

(2) that notwithstanding Resolution 301, this resolution shall be subject to the provisions of Resolution 301b. shall not come into effect unless Resolution 301b comes into effect and shall remain in effect only so long as Resolution 301b remains in effect.

(ATTACHMENT "A" ~~and "B"~~ published separately)

(END)

Filing Period  
24 February, 1960 -  
24 April, 1960

Effective Date  
1 May, 1960



(NOTE: MIDDLELINING AND UNDERLINING IS SHOWN  
AS AGAINST CURRENT VERSION)

Resolution 076c II  
Page 1

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NORTH ATLANTIC "AFFINITY" GROUP "TRAVEL" FARES  
REVALIDATING AND AMENDING

JT12(39)076c(088n) II

Expiry Date: 31 March 1971

Type: B

RESOLVED,

- (1) that, subject to Resolution<sup>s</sup> 012a\*, 060 and 060a\* for transportation between points in the U.S.A., Canada and Mexico, on the one hand, and points in Traffic Conference 2 on the other (via the "North" Atlantic), Members may establish "special" round or circle trip fares for groups of economy class passengers (hereinafter referred to as a 'Travel Group'), subject to the following conditions:

- (2) "(a)" that as used herein the term 'Travel Group' shall mean:

"(a) in relation to the fares specified in ATTACHMENT "A"

- (i) for travel all-year originating in the U.S.A., Canada or Mexico, a group of not less than 25 persons;

- (ii) for travel all-year originating in TC2, a group of not less than 15 persons;

~~\*(iii) for travel during the period from 1 April to 31 October, between points in U.S.A., Canada and Mexico on the one hand, and points in Europe as defined in Resolution 012, in relation to the fares and conditions specified in Attachment "B", a group of not less than 50 persons.\*~~

\*(b) in relation to the fares specified in ATTACHMENT "B" between points in the U.S.A., Canada and Mexico, on the one hand, and points in Europe (as defined in Resolution 012 excluding Portugal and Spain) Benghazi and Tripoli on the other

- (i) for travel commencing in the U.S.A., Canada or Mexico during the period from 1 June - 9 August, and for travel commencing in TC2 during the period from 1 July - 30 September, a group of not less than 50 persons;

- (ii) for travel commencing all year, except during the periods mentioned under Sub-paragraph (b)(i) above, a group of not less than 40 persons.\*

\* (3) \* (b) that for the purpose of computing the number of passengers two half-fare passengers shall be counted as one member of the group.

\* (4) \* (a) that the fare for each member of the Travel Group shall not be lower than the following:

\* (a) \* (i) in respect of (2)(a)(i) above, the fares set forth in ATTACHMENT "A", Column 1, except that for travel commenced and completed during the period 1 November - 31 March, the fares set forth in ATTACHMENT "A", Column 2; provided that return travel Westbound from a turnaround point in Europe may be completed during the month of April.

(ii) in respect of (2)(a)(ii) above, the fares set forth in ATTACHMENT "A", Column 3, except that for travel commenced and completed during the period 1 November - 31 March, the fares set forth in ATTACHMENT "A", Column 4.

\*\* (iii) -- in respect of (2)(a)(iii) above, for travel during the period 1 April - 31 October, the fares set forth in Attachment "B"; provided that outbound travel shall not commence after 16 October, and all travel must be completed by midnight of the 31st day of the same October. \*\*

\* (b) \* (i) in respect of (2)(b)(i) above, the fares set forth in ATTACHMENT "B", Column 1;

(ii) in respect of (2)(b)(ii) above, the fares set forth in ATTACHMENT "B", Column 2, except that for travel commenced during the period 1 November - 31 March the fares set forth in ATTACHMENT "B", Column 3, shall apply.\*

\*\* (b) -- these except as otherwise provided herein, the above fares shall be subject to all the conditions of Resolutions 060, 060a and 060a.

\* (5) \* (a) that with respect to all fares described in Paragraph \*(3)\* \*(4)\* above,

(i) travel across the "North" Atlantic sectors shall not be commenced between 0700 hours local time on Friday and 0700 hours local time on Monday during the following months:

Eastbound - June and July  
Westbound - August and September

- (ii) the provision in Sub-paragraph ~~\*(5)\*~~ ~~\*(4.4)\*~~ (a) above shall not apply in respect of Travel Groups originating in Puerto Rico for which the Group Fares are sold in Puerto Rico or for Travel Groups destined to Puerto Rico; provided that this exception shall not apply to routings via the Continental United States;
- (b) that with respect to fares to and from the Republic of Ireland included in ~~\*\* (3) (a) (iii) \*\*~~ ~~\*(4) (b)\*~~ above;

- (i) travel across the ~~\*\* North \*\*~~ Atlantic sectors commenced between 0700 hours local time on Friday and 0700 hours local time on Monday during the following months:

Eastbound - June and July

Westbound - August and September

to and from the Republic of Ireland shall be subject to a \$30 (U.S.) surcharge in each direction, provided that such surcharged fares shall not be combined with any fares except fares within the area \*comprised of\* ~~\*\* comprising \*\*~~ the U.S.A., Canada and Mexico.

- ~~\*\* (6) \* \*\* (5) \*\*~~ that all members of the Travel Group shall travel together as a single group on the same flight(s) for the entire itinerary, as shown in the written application, provided that:
- (a) when operating conditions over which the carrier has no control to prevent their being so transported, some members of the group may be transported on the next preceding or succeeding flight on which space is available;
- (b) with respect to transportation within TC2, when unavailability of space makes it impossible for passengers to travel as one group:
- \*(i)\* the Travel Group may be carried, at the carrier's option, on the first two flights of the same carrier on which space is available;
- \*(ii)\* except as provided in (iii) below\* when the group exceeds 30, the Travel Group may be carried on not more than the first three flights of the same carrier on which space is available;
- \*(iii)\* when the group exceeds 50, the Travel Group may be carried on not more than the first three flights on which space is available.\*

(c) except as otherwise provided in Resolution 21, this Paragraph shall not apply to transportation in or between the U.S.A., Canada or Mexico.

\*11\* that the Travel Group, is formed only from affinity groups, i.e. members (or employees) of the same association, corporation, company or other legal entity (hereinafter referred to as the 'Group Travel Organization') which shall have principal purposes, aims and objectives other than travel, and sufficient affinity existing prior to the application for transportation to distinguish it and set it apart from the general public and which has been in existence no less than 2 years prior to the date of application, provided that no transportation may be offered to a Group Travel Organization:

- (a) the membership of which exceeds 20,000; or
- (b) the membership of which exceeds 5% of the population of the political unit (i.e., country, State, province, county, town or village, or the equivalent or combination thereof) from which the membership is drawn, whichever is less.

The provisions of (a) and (b) above, shall not apply to groups the entire membership of which is drawn from a political unit having a population of 1000 persons or less, or to groups drawn from a college, a university, or a business firm or business corporation, or a department of a government (excluding armed forces).

\*12\* that with respect to the formation of a Travel Group from the category of persons described in Paragraph \*7)\* \*8)\* above:

- (a) solicitation is limited to personal letters, circulars and telephone calls addressed to members of the Group Travel Organization, to group publications intended solely for members of the Group Travel Organization (or for members of the federation or organization to which the Group Travel Organization belongs) and to any other form of solicitation not defined as public solicitation as defined in Paragraph \*8)\* \*9)\*;
- (b) solicitation is effected only by officials of the Group Travel Organizations or members of the Travel Group;
- (c) the Travel Group is not gathered directly or indirectly by a person engaged in soliciting or selling transportation services or providing or offering to provide transportation to the general public; provided that the mere ascertainment of

the group transportation fare will be paid for by members of the Travel Group, provided that the fare is to constitute one-third of the total fare for the group. If the organizers of the Travel Group are a travel agent or agent in the travel arrangements, such travel agent shall in no way solicit members of the Travel Group, except to offer the party to be transported is for the travel agent, any or all the members of such group, for the purchase of any other travel services in addition to services in travel arrangements;

- (d) each member of the Travel Group is a member of the Group Travel Organization at the time of application for the group fare discount and has been such a member for at least six months immediately prior to the date on which the transportation will commence;
- (e) the Travel Group may include the spouse and dependent children of a member of the Group Travel Organization from which the party to be transported is drawn and parents of a member living in the same household as the member; provided, however, that any such spouse, dependent children or parents are accompanied on the flight by such member unless the member has been compelled to cancel his passage and only if such member's fare is not refunded;

\*(9)\* \*\*{8}\*\* that as herein above used 'public solicitation' shall be deemed to exist when the group transportation is described, referred to, announced in advertisements or any other writing or by means of public communication, whether paid or unpaid, including but not limited to telephone calls, radio, telegraph and television; provided however, that a statement in public news media, other than advertisement, that could not reasonably be construed as calculated or likely to induce travel as a member of the Travel Group and which has not been initiated by the Group Travel Organization, any member of the Travel Group, the carrier or an agent or representative of any of them, shall not be considered public solicitation;

\*(10)\* \*\*{9}\*\* that Sub-paragraph (2)(d) of Resolution 278 shall not apply to transportation under this resolution and that, notwithstanding anything contained in Resolution 279, no voluntary re-routings of the itinerary, or any part thereof shall be permitted less than 30 days prior to the date of departure from the point of origin and the re-routing procedures provided for in such resolution shall apply to members of the Travel Group as a whole and not individually, provided that the entire Travel Group may return to point of departure at an earlier date than was indicated on the application, on the services of the same carrier(s) on which they were originally booked to return;

\*(12)\*

that the Issuing Member shall, for the travel arrangements of the Travel Group, after referred to as 'the Travel Group', be admitted to the Member issuing the tickets (the Issuing Member) not later than 30 days prior to commencement of travel. A deposit of 10% of the total fares involved shall be furnished in the event of cancellation of the Travel Group, for any reason, shall be paid to the Member issuing the tickets (the Issuing Member) not later than 30 days prior to commencement of travel.

\*(13)\* that the Issuing Member shall file a copy of the Application with the Secretary of the Association not later than 30 days after receipt thereof.

\*(14)\*

that only those persons named as passengers in the application may be included in the Travel Group actually transported; provided that not later than the tenth day before the date of flight departure the Travel Organizer, in writing to the Issuing Member, may add to the application the names of not more than 5 additional passengers who are qualified members of the Group Travel Organization, and whose tickets must be issued and paid for not later than the tenth day prior to the date of flight departure; provided further that no later than the fifth day before the date of flight departure the Travel Organizer, in writing to the Issuing Member, may replace the names of not more than 10 of the passengers named in the application with an equivalent number of names of other qualified members of the Group Travel Organization, who must be ticketed not later than the fifth day prior to the date of flight departure.

\*(15)\*

that, except as provided in Paragraphs \*(13)\* and \*(14)\* above, tickets for all members of the Travel Group shall be issued and, notwithstanding Resolutions 076: 11 and 076: 12, full payment therefor shall be made to the Issuing Member by the Travel Agent or the person responsible for the travel arrangements of the Travel Group not later than 21 days prior to flight departure;

\*(16)\*

that each Travel Group shall be identified by a definite reference number (group code) assigned by the Issuing Member;

\*(17)\*

that each ticket is completed in accordance with applicable Resolutions Series 270.

\*(18)\*

that in the case of cancellation, requested or caused by the Travel Group or any member thereof, and not (excluding the amount of the deposit) in accordance with Paragraph (10)) shall be made only if application therefor is made to the Issuing Member 21 days or more prior to flight departure, except that in the case of replacement of passengers referred to in Paragraph \*(13)\*, refund of the deposit shall be made when the number of passengers in the Travel Group actually to be

transported on the basis of the total number of passengers for which application has been made, and provided that voluntary refunds shall be made to or at the direction of the Travel Organizer;

\*(18)\* \*\*(16)\*\* that, notwithstanding any other provisions of this resolution, in the event of cancellation or re-routing by a member of the Travel Group due to:-

- (a) his/her death or the death of a member of his/her immediate family prior to commencement of travel, the full group fare paid by the passenger(s) and any member of his/her immediate family may be refunded;
- (b) death of the passenger en route, the difference, if any, by which the group fare paid by the passenger exceeds the applicable fare for the sectors actually flown by the passenger calculated from the original point of origin may be refunded;
- (c) a death in the immediate family of a passenger occurring after the commencement of travel, the amount of the group fare paid by the passenger may be applied as a credit (but not in cash) towards the purchase of transportation at applicable fares for the sectors actually flown by the passenger, calculated from original point of origin. Similar credit towards the purchase of transportation at applicable fares may be made for other members of the Travel Group who belong to the immediate family of such passenger;
- (d) a passenger, after commencement of travel, being unable to complete or continue his/her journey with the group due to illness, which must be substantiated by a medical certificate, the amount of the group fare paid by the passenger may be applied as a credit towards the purchase of transportation at applicable fares for the sectors actually flown by the passenger, calculated from original point of origin. Similar arrangements for transportation may be made for other members of the Travel Group who belong to the immediate family of such passenger;

\*(19)\* \*\*(17)\*\* that in any of the circumstances described in Sub-paragraphs \*(18)\* \*\*(16)\*\* (a), (b), (c) and (d) above, the remaining members of the Travel Group, regardless of their number, shall commence or continue, as the case may be, with the itinerary as originally described in the application, subject to all other conditions of this resolution;



- (20) that, in the event of cancellation of the entire Travel Group less than 31 days prior to the departure of the entire Travel Group requested or caused by the Travel Group or members thereof, the provisions of paragraph (19) above, shall not be deemed to preclude the application for any portion of the amount of a non-refundable group fare as a credit to the price of normal fare transportation for the passenger named in non-refundable tickets; provided, however, that the normal fare ticket is annotated with the ticket number of the unused group fare ticket and is endorsed to provide that the portion of the normal fare represented by the fare of the group fare credit is non-refundable,
- (21) that notwithstanding paragraph (19) above, if at departure time or at any time thereafter, the number of passengers in the Travel Group is less than that for which tickets have been paid (total tickets), the balance of the group fare travel provided the appropriate flight coupons of the total tickets are deemed used and will be ineligible for refund; provided that the reduction in the number of passengers traveling with the Travel Group is caused by circumstances beyond the control of the passenger (i.e. force majeure). The facilities permitted under this paragraph shall not be advertised or promoted in any way.
- (22) that in advertising these fares the amount of the reduction permitted under this resolution may be specified but the reduction may not be advertised in terms of percentages or proportions of any fare.
- (23) that, subject to Resolution 011a, fares specified between two points in any Attachment hereto take precedence over any combination of intermediate fares applicable between the same points.
- (24) that the group fare may be used in either of two ways, namely that on the 31-day advance notice of cancellation of the entire Travel Group with force majeure within the boundaries of the United States, Canada and Mexico,
- (25) that such fares may be used in combination only with:
- (a) the applicable non-preferred fares in Attachment "b", "c" or "d" of Resolution 011, or the equivalent;
- (b) fares within the area or price of U.S.A., Canada and Mexico, subject to paragraph (22) of Resolution 011, and/or
- (c) normal FOC or STAG fares.

(26) that stopovers shall be permitted at the fares specified in ATTACHMENT "A" hereto subject to the limitations shown thereon. Stopovers shall not be permitted at the fares specified in ATTACHMENT "B" hereto.

(27)\* ~~24~~\*\* that in TC1, sales of the group fares provided for herein shall be limited to the U.S.A., Canada and Mexico for Group Travel Organizations drawing their affinity within such area; \*provided that this shall not be deemed to preclude payment in the U.S.A., Canada or Mexico for Group Travel Organizations drawing their affinity within TC2 and travelling from TC2 to the U.S.A., Canada and/or Mexico and return.\*

\*(28)\* ~~25~~\*\* that the group fares provided herein shall not be used for construction of around-the-world fares, nor shall one-half of a round or circle trip group fare be used to construct another type round or circle trip fare over the ~~"North"~~ Atlantic;

~~\*\*26)--that-fares-established-pursuant-to-the-above-provisions-to/from Mexico-and-to/from-points-in-the-United-States-may-be-applied via-Mid-Atlantic-routings-subject-to-the-provisions-of-Resolution 011a.\*\*~~

\*(29)\* ~~27~~\*\* that ~~\*\*reduction-for-children-and-infants-authorized-by\*\*~~ Resolution 201 ~~\*\*may-be-applied-to-the-above-fares\*\*~~ \*shall apply\*.

\*(30)\* ~~28~~\*\* that, except as authorized herein, no other reduction shall apply.

\*(31)\* ~~29~~\*\* that ~~\*\*the-free-or-reduced-fare-transportation-for-a-tour conductor-established-in-\*\*~~Resolution 201 shall not ~~\*\*be-applicable\*\*~~ \*apply.\*

\*(32)\* ~~30~~\*\* that, notwithstanding Resolution 510a, 510e and 820a, no additional commission for the sale of inclusive tours made in connection with Group Travel Fares provided for herein shall be paid.

\*(33)\* ~~31~~\*\* that, notwithstanding Resolution 001, this resolution shall be subject to the provisions of Resolution 001b, shall not come into effect unless Resolution 001b comes into effect, and shall remain in effect only so long as Resolution 001b shall remain in effect.

(ATTACHMENTS "A" and "B" published separately)

Filing Period  
24 February, 1969  
24 April, 1969

Effective Date  
1 November, 1969

NON-RESIDENTIAL TRAVEL BY GROUPS (NRT)

JT121(30)076,  
JT122(30)076.

Expiry Date: 31 March 1971

Type: A except for  
individual fares  
which are type B

RESOLVED,

- JT12 (1) that Members may, subject to the provisions of Resolution 076eII, except as otherwise provided herein, carry Incentive Groups between points in the U.S.A., Canada and Mexico on the one hand and points in Traffic Conference 2 on the other, via the Atlantic, at the fares specified in ATTACHMENT "B" of Resolution 076eII for the appropriate group size in Paragraph (1.) below.
- JT123 (1) that Members may, subject to the provisions of Resolution 076i, except as otherwise provided herein, carry Incentive Groups between points in the U.S.A., Canada and Mexico on the one hand and points in India, Pakistan, Afghanistan, Ceylon and Nepal on the other, via the Atlantic, at the fares specified in ATTACHMENT "B" of Resolution 076i for the appropriate group size in Paragraph (1.) below.
- (2) that Incentive Groups shall not be carried at such fares
- (a) as to eastbound travel originating in U.S.A./Canada/Mexico, during June or July
  - (b) as to westbound travel originating in TC2 or TC3, during July, August or September
- (3) that Incentive Groups shall mean groups of employees and/or dealers and/or agents (including their spouses) of the same business firm(s), corporation(s) or enterprise(s) (excluding non-profit organizations) travelling under an established Incentive Travel Program, which rewards the employees/dealers/agents for past work or provides an incentive for future activities; provided that,
- (a) The Incentive Travel Program includes air transportation, accommodations, sightseeing, entertainment and other features the cost of which is borne entirely by such firm/corporation/enterprise and not passed on directly or indirectly to the employees/dealers/agents; and
  - (b) Officials (and their spouses) of such firm/corporation/enterprise may also be included in the group if they are travelling for the purpose of making awards or officiating in the Incentive Travel Program.

- (c) that Incentive Groups shall not be subject to the affinity requirements of Resolution 076a11 or 076i.
- (4) that the Incentive Group shall consist of:
- (a) for travel originating in the U.S.A./Canada/Mexico, a group of not less than 40 passengers
  - (b) for travel originating in TC2, a group of not less than 20 passengers.
- (5) that for the purpose of computing the number of passengers, two half fare passengers shall be counted as one member of the group.
- JT123 (6) that Incentive Groups may be divided into sub-groups of not less than 10 passengers each for travel within the area comprised of India, Pakistan, Afghanistan, Ceylon, and Nepal.
- JT12 (7) that no stopovers shall be permitted.
- JT123 (7) that a maximum of 4 stopovers (exclusive of the point of turnaround) shall be permitted: provided that no more than one stopover in each direction shall be permitted outside the area comprised of India, Pakistan, Afghanistan, Ceylon and Nepal.
- (8) that return travel on the flight coupon covering the transatlantic portion shall not be commenced prior to the 6th day after the date of commencement of outbound transatlantic travel shown on the flight coupon concerned and all travel shall be completed by midnight of the 14th day after the date of commencement of travel from point of origin.
- (9) that written application for Incentive Group fares shall be made on the form set out in ATTACHMENT "A" hereto.
- (10) that notwithstanding Resolution 001, this Resolution shall not come into effect unless Resolution 001b comes into effect and shall remain in effect only so long as Resolution 001b remains in effect.

(END)

Filing Period  
24 February, 1969  
24 April, 1969

Effective Date:  
1 November 1969

## NORTH ATLANTIC CONTRACT BULK INCLUSIVE TOURS RULES

(NEW)

JTM2(39)0794

Expiry Date: 31 March 1971

Type: A, except Paragraphs (14) and (22) which are Condition C.

## RESOLVED,

- (1) that a Member(s) may perform round, circle or single open jaw trip transportation for inclusive tours between points in the Continental USA, Alaska, Hawaii, Canada and Mexico, on the one hand and points in Europe (as defined in Resolution 012) and the specified points in the Middle East, Benghazi and Tripoli, on the other hand, over the Atlantic, by contracting space in the economy class section of an aircraft being operated as a scheduled service at a contract bulk price, as established in ATTACHMENT "A" hereto, subject to the following conditions.

## Definitions

- (2) that, as used in this Resolution,

- (a) "Contracting Member" means the IATA Member who contracts with the Contractor for the performance of transportation at the contract bulk price.
- (b) "Contractor" means the Tour Operator, as defined in the Applicable Resolution 210e, with whom space is contracted by the Contracting Member.
- (c) "Participating Carrier" means any air carrier participating in the air transportation covered by the contract.
- (d) "Single Open Jaw Trip" means travel which is essentially of a round trip nature, except that the outward point of arrival and the inward point of departure are not the same.
- (e) "Stopover" means a deliberate interruption of the air journey by the group, agreed to in advance by the Contracting Member, at a point between the place of departure and the place of destination, which includes tour features specified in the tour literature and/or an overnight stay with sleeping accommodations, provided that, when due to the scheduled time of arrival of the delivering carrier, no onward connection is

available the same date, an overnight stay, including sleeping accommodations only, shall not be deemed to be a stopover; provided further that such overnight stay shall not be promoted nor shown in the tour literature other than where the daily schedule of the tour is shown and shall not be permitted at the through bulk contract price more than once in any itinerary.

#### Conditions of Service

- (3) that the conditions of service set out in Resolutions 060 and 060a shall apply.

#### Use of Space

- (4) that the Contractor shall be charged for the entire capacity contracted for, whether or not such capacity is entirely utilised by him, except as provided in Paragraph (14) below.

#### Tour Features

- (5) that contract bulk arrangements may be made for the purpose of carrying groups of passengers who have purchased the same approved inclusive tour established in accordance with Resolution 810e, except as otherwise provided herein. The tour must provide:
- (a) sleeping accommodation for the total duration of the trip in hotels, motels (including commercially operated immobile caravans/trailers) or commercially operated pensions;
  - (b) a daily programme of sightseeing and/or entertainment features on at least half the number of days in the total trip; provided that not more than three days of leisure time shall be consecutive at any period during the trip;
  - (c) the price of tour items in (a) and (b) above shall not be less than the amount specified in Paragraph (6) below;
  - (d) notwithstanding the above, sleeping accommodations may be provided on means of public transportation which offer sleeping accommodation; provided that
    - (i) such public transportation and sleeping accommodation is featured in approved tour literature; and
    - (ii) at least U.S. \$50.00 (in the case of 14 day tours) and, additionally, U.S. \$3.50 for each day in excess thereof, must be used to provide the features in (a) and (b) above, in addition to such public transportation provided that the total price of the tour shall not be less than the price established in Paragraph (6) below.

### Minimum Selling Price

- (6) that the minimum selling price of the tour for the features in (5) above shall be the contract bulk price reduced to a unit basis plus U.S. \$100 for the minimum stay period and additionally U.S. \$7.00 a day for each day in excess thereof; provided that if the Contractor allows a discount on land arrangements for children and infants the minimum selling price for children and infants may be reduced accordingly.

### Modification of Approved Itineraries

- (7) that modification of approved itineraries shall be permitted only when and to the extent modification of the itinerary of the entire Inclusive Tour Group is necessitated by circumstances beyond the control of the Contractor, provided that any such modification to an approved air itinerary required before the departure of a group shall be made only with the approval of the Contracting Member and participating carrier affected and provided further that this will not permit modification to an approved itinerary due to lack of space on any given part of the original air itinerary; provided further that if circumstances beyond the control of the Contractor necessitate a substitution of facilities in the land arrangements then the Contractor may make such substitution but only in substantially the same geographical location as in the approved itinerary.

### Vouchers

- (8) that there shall be vouchers specifying sleeping accommodations and vouchers specifying sightseeing tours, and other features of the tour. Such vouchers, including those for ground transportation, shall be available for inspection during check-in prior to commencement of the outward Atlantic portion of travel.

### Minimum - Maximum Stay

- (9) that inclusive tours covered by the Contract Bulk arrangement shall be valid for travel for a period of not less than 14 nor more than 21 days; provided that where the actual length of the itinerary, including the day of departure, is 22 days, the maximum period of 22 days duration may be specified in the tour brochures.

### Return Travel

- (10) that return travel on the flight coupon covering the trans Atlantic portion shall not be commenced prior to the 14th day after the date of commencement of outbound trans Atlantic travel shown on the flight coupon concerned and all travel shall be completed by midnight of the 21st day after the date of commencement of travel from point of origin; provided that for westbound originating traffic destined to G. L. R., Mexico, etc., all travel shall be completed by midnight of the 22nd day after the date of commencement of travel from the point of origin.



Purchasing, Distribution and Advertising of Tour Literature

(11) (a) Purchasing

that Member(s) shall not purchase, directly or indirectly, from the Tour Operator or the Tour Operator's printer any tour literature publicizing any tour(s) to be used in conjunction with contract arrangement made hereunder; neither shall Member(s) assume, directly or indirectly, in whole or in part, the cost of producing tour literature, except as may otherwise be provided in Sub-paragraph J(1)(j) of Resolution 810a but limited to advertising artwork or reproduction material such as mats, plates, engravings and silk screens used in reproducing coloured photographs.

(b) Distribution

that Member(s) shall not distribute or assume, directly or indirectly, the cost of distribution of such tour literature; provided, that this shall not preclude mailing of a copy of the tour literature to the Member's own Agency mailing list and copies to its own offices, nor delivering by a Sales Representative of a few copies, not to exceed 6, to Agents.

(c) Advertising

(i) that Member(s) shall not assume on behalf of the Tour Operator, directly or indirectly, the cost of producing or placing of media advertising in connection with the promotion of such tours, except as provided in (11)(a) above. This shall not preclude reference to tour prices, departure dates, or general itinerary description in Member(s) own media or direct mail advertising, such as advertising which promotes Member(s) fares, destination attractions, schedules or aircraft equipment.

(ii) that such media advertising by the Member(s) may not include the name of the Tour Operator but may include reference to the tour(s) brand name; provided that such brand name is not identical to or similar to the name of the IATA Sales Agent or Tour Operator sponsoring or producing the tour(s).

(iii) Bulletins or simple written or printed announcements by a Member(s) to travel agents shall not be considered advertising.

Commission

(12) that notwithstanding any other resolution, no commission shall be paid by a Member for sale of transportation under a bulk inclusive tour contract; provided that this shall in no way be deemed to preclude the Contractor from paying commission to an IATA Sales Agent.

## Interline Arrangements

(13)(a) that before signing the Bulk Contract,

(i) the Contracting Member(s) shall make written request (including telex) for space on participating carrier(s) in conformity with the provisions of this Resolution.

(ii) the request shall specify that the space is contract bulk space.

(iii) written acceptance (including telex) thereof before signing shall confirm the allocation of such space by the participating carrier.

(b) that upon signing the Bulk Contract, the Contracting Member shall so notify all participating carrier(s) of the appropriate details, including bulk contract reference number, full itinerary, number of seats and sector(s) involved and date(s) and flight numbers.

## Condition

C

## Contract Bulk Conditions

(14) (a) that the Contractor shall, not less than three months before departure, execute an "Application and Contract for Bulk Inclusive Tours," as shown in ATTACHMENT "C" hereto. The Contract shall be for a block(s) of not less than 40 seats per departure for travel commencing USA, Canada or Mexico, or for a block(s) of not less than 20 seats per departure for travel commencing in TC2. Such contract shall provide for a deposit of 10% of the agreed price, to be paid in cash or by cheque by the Contractor so as to be received by the Contracting Member not later than three months before the date of each departure for which space has been contracted. Such deposit shall not be waived or refunded for any cause or reason;

(b) that the balance of the contract price (final payment) shall be paid in cash or by cheque so as to be received by the Contracting Member not later than one month (including date of departure) prior to each departure date; (see examples below).

Departure	Balance	Deposit
June 25	May 25	March 25
May 31	April 30	Feb. 28

(c) that notwithstanding (a) and (b) above, the Contractor may purchase additional blocks of 5 seats at a minimum price as shown in ATTACHMENT "A" hereto not later than one month before departure by executing the Addendum to the Application and Contract shown in ATTACHMENT "D" hereto; provided that

such additional purchase shall be subject to the 10% deposit referred to in (a) above which shall be paid in cash or by cheque so as to be received by the Contracting Member not later than the date of such additional purchase; provided further that all other conditions in (a) and (b) above shall be complied with.

- (d) that all payments by cheque in (a) (b) and (c) above shall be deposited by the Member no later than the next business day after receipt.
- (e) that contracted seats may be cancelled by the Contractor between contract date and final payment date subject to the following:
  - (i) the Contractor may cancel only once;
  - (ii) the number of cancelled seats shall not exceed 20% of the originally contracted seats.
  - (iii) no cancellation shall result in the number of seats contracted being reduced below the minimum specified in Sub-paragraph (14)(a) above;
  - (iv) the deposit of 10% shall be forfeited by the Contractor.
- (f) notwithstanding the above, if additional seats are purchased in accordance herewith, then no seats may thereafter be cancelled, including the seats previously contracted for.
- (g) that if the Contractor fails to pay the balance of the contract price (final payment) by the date stipulated in Sub-paragraph (14)(b) above then all affected contracted seats shall be deemed to be released to the Member(s).

#### Travel Together

- (15) that all members of the Inclusive Tour Group shall purchase, and travel together on, the same Inclusive Tour (as defined in Paragraph (5) hereof and as identified by the same approved Inclusive Tour Code Number) for the entire itinerary; provided that:
  - (a) after commencement of travel, the Contractor may not increase the actual number of passengers travelling on contract portions of the journey above the number ticketed for the first outbound contract portion, regardless of whether such number is less than the number of seats contracted for.

- (b) for ground transportation portions of the Inclusive Tour, members of the group shall travel via the same points except as provided in (c) below but need not travel at the same time; provided that this shall not prevent members of the group (or sub-group described in (c) below) travelling together from occupying different hotel accommodations or purchasing separate sightseeing arrangements (if these features are included in the tour literature); provided further that this shall not prevent individual surface travel between different points in the same country in the same resort area on wholly ski tours.
- (c) sub-groups may be permitted follows:
  - (i) as to traffic originating in TC1 (eastbound)
    - (aa) for that portion of the travel within TC2 not covered at the bulk contract price, the tour features may permit the group to be divided into not more than two sub-groups, with separate and distinct itineraries, of not less than 15 passengers each. These separate itineraries must be identified by the same numeric IT designator, suffixed by "A" and "B", respectively in the same tour literature and may be all air, all surface or combination(s) of both; provided that any air fares used as a part of these separate itineraries shall be normal or special fares which in themselves are combinable.
    - (bb) with respect to air transportation within TC2 at the contract bulk price the number of contracted seats may be divided into sub-groups of not less than 20, which sub-groups may be carried on two or more flights on the same day, provided that and subject to Sub-paragraph (2)(c), when at a connecting point in TC2 no more than one flight of any carrier is operated daily to the point of destination or next point of stopover in the Middle East, such sub-groups may be carried the following day and within a period not to exceed 32 hours from the departure time of the flight carrying the first sub-group.
  - (ii) as to traffic originating in TC2 (westbound)
    - for that portion of the travel within TC1 not covered at the bulk contract price, the tour features may permit the group to be divided into not more than two sub-groups, with separate and distinct itineraries, of not less than 8 passengers each. These separate itineraries must be

identified by the same numeric IT designators suffixed by "A" and "B", respectively in the same tour literature and may be all air, all surface, or combination(s) of both; provided that any air fares used as a part of these separate itineraries shall be normal or special fares which in themselves are combinable.

#### Sale and Advertising of Tours

- (16) (a) that tours may be sold only by or through IATA Approved Agents or through Members' own offices.
- (b) that sales, advertising and distribution of tour literature in TCI shall be limited to the continental USA, Alaska, Hawaii, Canada and Mexico.

#### Combinations

- (17) that the contract bulk price shall not be combined directly or indirectly with other fares except:
  - (a) the contract bulk inclusive tour proportional amounts specified in Attachment "B" to this Resolution; and/or
  - (b) fares within the area comprised of the continental USA Alaska, Hawaii, Canada and Mexico, subject to Paragraph (22) to Resolution 014a; and/or
  - (c) fares within Europe (as defined in Resolution 012), the Middle East and Tripoli, which by their terms are combinable, subject to Resolution 014a and subject to compliance with all the conditions applicable to such fares.

#### Ticketing

- (18) that all passengers shall be ticketed in accordance with Resolution (\* ).

\*(Drafting Note: Resolution to be adopted by PTTC).

#### Passenger List

- (19) that the Contractor shall not later than (48) hours prior to the departure of each flight in the series, advise the Contracting Member, of the names of all passengers travelling in the relevant inclusive tour group, the ticket numbers issued and any necessary special information such as dietary requirements. Only those persons named as passengers in such list may be included in the travel group to be transported.

Routing Control

- (20) (a) that the provisions of Resolution 014a except Sub-paragraphs (4)(b) and (4)(c)(ii) shall apply to the contract bulk unit seat prices specified in ATTACHMENT "A" hereto.
- (b) that notwithstanding Paragraph (17) of this Resolution, in construction of contract bulk prices, any combination with other fares shall be limited to combination over points which are included in the actual tour itinerary.
- (c) that for the purpose of this rule, the word "fare" in Resolution 014a shall be deemed to include "contract bulk unit seat price."

Open Jaws

- (21) that in the case of single open jaw contract bulk arrangements at prices permitting stopovers as set out in ATTACHMENT "A" hereto, not more than one stopover shall be permitted on the outbound leg and not more than one stopover on the inbound leg and the price to be charged for the open jaw contract space shall be half the applicable round trip contract prices for each leg in the open jaw; provided that in case a backhaul is involved on one or both legs the price for each leg with a backhaul shall not be lower than the higher intermediate contract roundtrip price reduced by half the contract roundtrip price for the same block of seats between the terminal points of the leg.

Stopovers

Condition

C

- (22) that, except as provided in (21) above, stopovers shall be permitted in accordance with ATTACHMENTS "A" and "B" hereto.

Involuntary rerouting

- (23) that, except for Sub-paragraph 2(d) thereof, the provisions of Resolution 278 shall apply.

Voluntary Rerouting

- (24) that voluntary rerouting shall not be permitted

Ticket Validity

- (25) that the provisions of Resolution 277 shall not apply except for Paragraph (1) thereof.



**Baggage**

- (26) that Member(s) shall apply the normal free baggage allowance and charge normal baggage rates for any excess baggage.

**Discounts**

- (27) that no discounts provided in any other Resolution shall apply to the contract bulk price.

**Refunds**

- (28) (a) that no refunds shall be granted by the Member to the Contractor.
- (b) that any refunds to passengers shall be the sole responsibility of the Contractor and a notice to that effect shall appear in the tour literature.

**Absorption of Passenger Expenses**

- (29) that, notwithstanding any other resolution, a passenger's hotel, room, meal, ground transportation, airport service charge or transit tax expenses at scheduled stopping or connecting points shall not be absorbed.

**Responsibility**

- (30) (a) that the "Application and Contract for Bulk Inclusive Tours" shall include stipulations by the Contractor that:
- (i) The Contractor agrees that it is his (its) Responsibility that the conditions of sale of the Inclusive Tour are carried out and that each passenger has purchased the full amount of required ground arrangements as described in the tour literature and that all passengers for whom space has been contracted hereunder are travelling as part of such Inclusive Tour. This shall not preclude the Contractor from assigning one of his employees or an employee of an IATA agent to act as a tour escort;
  - (ii) The Contractor agrees, upon reasonable demand, to make available to a Compliance Officer of IATA for inspection all records of the Contractor, relating to his (its) eligibility for and/or use of the contracted space;
  - (iii) In addition to the contracted bulk space price, the Contractor agrees to pay to the contracting member a sum equivalent to the IATA fare which would have been applicable to an individual member of the public, for each person carried who does not meet the terms of the contract bulk space arrangements and/or the above mentioned tour literature.



Meeting Non-IATA Competition

(31) (a) that where three North Atlantic Operators consider that any price or provision contained or referred to in this Resolution materially damages their interest by preventing them from meeting a fare, rate or practice of a non-IATA air carrier, such Members may reduce such price or modify or suspend such provision by rescinding it to the extent necessary; provided that where operations along the route or in or between the areas affected are conducted by not more than three North Atlantic operators any one or more such members may take such action; provided further:

(i) that the Member(s) file(s) with the Secretary, Traffic Conferences for circulation to all Conference Members, and confirm this by cabled notice to all Conference Members, a written notice containing:

(aa) the fares or rates charged or the practices in effect for transportation by the non-IATA air carrier and by the filing Members,

(bb) the frequency of services operated by the non-IATA air carrier and by the filing Members, and

(cc) the price or modification or suspension of the provision proposed to meet the condition created by the acts or omissions of the non-IATA air carrier complained of;

(ii) that three North Atlantic Operators may, alternatively file with the Secretary and each Conference Member a cabled notice containing the information specified in Sub-paragraph (a)(i) above; provided that where operations along the route or in or between the areas affected are conducted by not more than three North Atlantic Operators, any one or more such Members may take such action;

(iii) that any price or modified or suspended provisions filed pursuant to Sub-paragraph (a)(i) above shall become effective 40 days after the date of filing with the Secretary and shall remain in effect until the date prescribed at the next Conference meeting, unless otherwise adjusted by the provisions hereof;

(iv) that any price or modified or suspended provision filed pursuant to Sub-paragraph (a)(ii) above shall become effective as follows:

(aa) such price or modified or suspended provision shall become effective 7 days after the date of filing if within that period no protest is received by the proposing Members and the Secretary;

(bb) such price or modified, or suspended provision shall become effective 40 days after the date of filing if within 7 days of filing a protest is received by the proposing Members and the Secretary;

(cc) once effective, such price or modified or suspended provision shall remain in effect until the date prescribed at the next Conference meeting, unless otherwise adjusted by the provisions hereof;

(dd) no Member shall be permitted to take formal government tariff filing action until the 18th day after the date notice was filed with the Secretary, pursuant to Sub-paragraph (a)(i) and (ii) hereof;

(v) that, except to the extent necessary to meet the situation, advertising and sale of such transportation, including the issuance of exchange orders and issue wires, shall be limited to the country of commencement of travel at such fare.

(b) that,

(i) any Member may protest a filing made pursuant to Sub-paragraph (a)(i) and (ii) above, and may require the Secretary to convene a meeting within seven days of the date of the filing of the protest and to notify promptly all Conference Members thereof;

(ii) at such meeting, the protested price or provision and any related price or provision shall be subject to negotiation, and any new price or provision so agreed, including the one(s) filed, shall become effective as prescribed at such meeting;

(iii) if agreement is not reached at such meeting, and/or the three filing Members do not agree to withdraw the filing, any Conference Member may, not later than 15 days after the meeting, rescind this resolution by notice thereof to all Conference Members through the Secretary.

(NOTE: as used in this Sub-paragraph (b) "meeting" shall not be deemed a "Conference meeting" as elsewhere used in this Paragraph).

(c) that if after action has been instituted hereunder, the situation giving rise thereto has been remedied, the complaining Members shall forthwith advise the Secretary, for notification of all Conference Members, and 30 days thereafter, the price or provision shall be deemed reinstated to its original validity.

- (a) that any relief accorded by this Resolution shall be only along the routes or between the areas affected by the fare, rate or traffic practice complained of, and any other Member may make corresponding charges to its prices or provisions to the extent necessary to relieve itself to the same extent.
- (e) that, any action taken pursuant to this Paragraph shall be subject to review by the next Conference meeting.
- (32) that this Resolution shall be subject to Resolution 850d and, except as otherwise provided herein, to Resolution 810a.
- (33) that notwithstanding Resolution 001, this Resolution shall be subject to the provisions of Resolution 001b, shall not come into effect unless Resolution 001b comes into effect, and shall remain in effect, only so long as Resolution 001b shall remain in effect.
- (34) that notwithstanding the effectiveness date of 1 November 1969 of ATTACHMENT "A", bulk contract prices pursuant to this Resolution may be applied between points in the Continental U.S.A., on the one hand and points in Spain on the other hand, as of an earlier date but in no event before 1 April 1969, as follows:
- (a) any transatlantic Member serving the above two areas directly which deems an advance date necessary to effectively counter-act non-IATA competition may serve cable notice to this effect on all North and Mid Atlantic Operators and on the Secretary, Traffic Conferences for circulation to all Members.
- (b) 30 days after such notice, such Member and any other such transatlantic Member directly serving between points in the Continental U.S.A. and Canada on the one hand and points in Spain and Portugal on the other may apply such earlier date with respect to these bulk prices for tour itineraries between these two areas.
- (35) that Members need not include Paragraphs (31) through (35) in the copy of this Resolution given to Contractors.

(END)

Filing Period  
24 February, 1969 -  
24 April, 1969

Effective Date  
1 May, 1969, except  
ATTACHMENTS "A" and "B"  
which are effective  
1 November, 1969

ATTACHMENT "A" TO RESOLUTION 079a

## Application of Contract Bulk Unit Seat Prices:

1. Determination of Bulk Prices

In order to determine the contract bulk price for a block of seats, the unit seat price shown in APPENDIX 1 to this ATTACHMENT "A" shall be multiplied by the number of seats contracted for by the Contractor in accordance with Paragraph (14) of this Resolution.

2. Validity Periods

- (a) Peak Season - The unit seat prices set forth in Column (1) of APPENDIX 1 shall apply when outbound transatlantic travel commences during the following periods:

- (i) for travel originating in the U.S.A./Canada/Mexico (Eastbound)

5 June - 5 July inclusive  
31 July - 23 August inclusive

- (ii) for travel originating in TC2 (Westbound)

29 May - 21 June inclusive  
14 August - 6 September inclusive

- (b) Shoulder Season - The unit seat prices set forth in Column (2) and (3) of APPENDIX 1 shall apply when outbound transatlantic travel commences during the following periods:

- (i) 1 April - 31 October inclusive, except during the periods mentioned in (a) above,

- (ii) 10 December - 24 December inclusive.

- (c) Off Season - The unit seat prices set forth in Column (4) and (5) of APPENDIX 1 shall apply when outbound transatlantic travel commences during the period 1 November - 31 March, except during the period in (b)(ii) above.

3. Stopovers

Stopovers, as defined in Paragraph (2) of this resolution, shall be permitted at the Contract Bulk unit seat prices shown in this Attachment, as follows:

I. Columns (1), (2) and (4)

- (a) Travel between points in the U.S.A./Canada/Mexico, on the one hand, and points in Europe, Benghazi and Tripoli, on the other:

either one outbound and one inbound, or two outbound or two inbound in addition to the stopover at point of turnaround.

- (b) Except as provided in (c) below, travel between points in the U.S.A./Canada/Mexico on the one hand and the commorated points in the Middle East, Baghdad, Nicosia and Teheran on the other:

one outbound in Europe and one inbound in Europe, in addition to three stopovers in the commorated points in the Middle East and Nicosia, including the point of turnaround.

- (c) Travel between points in the U.S.A./Canada/Mexico on the one hand and Israel on the other:

in the outbound direction, one stopover in Nicosia but no stopover in Europe, and in the inbound direction, one stopover in Nicosia and one stopover in Europe.

II. Columns (3) and (5)

Travel between points in the U.S.A./Canada/Mexico on the one hand and points in Europe, Benghazi and Tripoli on the other:

Stopovers not permitted.

(END OF ATTACHMENT "A")

("APPENDIX 1" PUBLISHED SEPARATELY)

ATTACHMENT "B" TO RESOLUTION 079aNORTH AMERICAN PROPORTIONAL AMOUNTS

The proportional amounts listed below shall be used in constructing Contract Bulk Inclusive Tour prices between points in North America specified below, on the one hand, and points in Europe (as defined in Resolution 012) and the specified points in the Middle East, Benghazi and Tripoli, on the other, over the Atlantic.

Such prices shall be constructed by combining over the specified construction point the Contract Bulk unit seat prices in ATTACHMENT "A" to this resolution with the applicable Contract Bulk Proportional Amounts shown below:

North American Contract Bulk Proportional Amounts (1)

<u>Between</u>	<u>Area</u>	<u>Add to</u>	<u>No Stopover(2)</u>		<u>Stopover(3)</u>	
			<u>Amount</u>	<u>Constr.</u>	<u>Amount</u>	<u>Constr.</u>
Calgary	1	YUL	66.00	ARB	95.00	ARB
Chicago	1	NYC	80.00	ARB	90.00	L
Edmonton	1	YUL	66.00	ARB	95.00	ARB
Los Angeles	4	NYC	130.00	ARB	160.00	ARB
	5	NYC	113.00	DIFF(4)	143.00	DIFF(4)
	6	NYC	130.00	ARB	160.00	ARB
Minneapolis	3	NYC	110.00	=SEA	122.00	L
	6	NYC	119.00	=SEA	122.00	L
Portland, Ore.	1	NYC	130.00	ARB	160.00	ARB
San Francisco				=LAX		=LAX
Seattle	3	NYC	110.00	ARB	140.00	ARB
	6	NYC	119.00	ARB	149.00	ARB
Toronto	1	YUL	35.00	ARB	46.40	L
Vancouver	1	YUL	98.00	ARB	128.00	ARB
Winnipeg	1	YUL	45.00	ARB	75.00	ARB

NOTES

- (1) Travel together required on the entire portion of the journey within the U.S., Canada and Mexico.
- (2) No stopover permitted in North America.
- (3) Only one stopover, (either outbound or inbound), permitted and only at North American Gateway point.
- (4) This proportional amount applies only in connection with the prices shown in ATTACHMENT "A", Column (1); for use in connection with other Columns, apply the following:

For use in connection withAmend

Column (2)	Deduct \$5.00
Column (3)	Add \$5.00
Column (4)	Deduct \$21.00
Column (5)	Add \$6.00

(END OF ATTACHMENT "B")



100

(NOTE: MIDDLELINING AND UNDERLINING ARE SHOWN  
AS AGAINST CURRENT VERSION) - 204 -

NORTH ATLANTIC GROUP INCLUSIVE TOURS - MIDDLELINING - PAR 10

REVALIDATING AND AMENDING

JT12(39)084a (087) II  
JT123(33)084a(087) II

Expiry Date: 31 March, 1971

Type A, except for individual  
fares which are Type B

RESOLVED, that

(1) that, subject to the provisions of Resolutions JT12(36)810d,  
JT123(30)810d, ~~\*\*130\*\*~~ \*\*130\*\*/810e, ~~\*\*237\*\*~~ \*\*210\*\*/810e and  
~~\*\*321\*\*~~ \*\*331\*\*/810e, as the case may be, and the terms hereof,  
economy class group inclusive tour ~~\*\*Basing\*\*~~ fares as set out  
herein, may be used to establish group inclusive tours over  
the Atlantic:

(a) between ~~\*\*Mexico-Canada\*\*~~ the Continental U.S.A., Alaska,  
~~\*\*and\*\*~~ Hawaii, Canada and Mexico on the one hand, ~~\*\*and~~  
points-in-Europe-(as-defined-in-Resolution-0124)\*\* and the  
specified points in 702 ~~\*\*the-Middle-East\*\*~~ on the other,

(b) between ~~\*\*Mexico-Canada\*\*~~ the Continental U.S.A., Alaska,  
~~\*\*and\*\*~~ Hawaii, Canada and Mexico on the one hand, and  
specified points in 703 on the other.

\*(2) except as otherwise provided in this Resolution, tours shall  
comply with the requirements of Resolution 130/810e, 210/810e or  
331/810e, as amended, for tours produced by Tour Operators and  
commenced in Traffic Conference 1, Traffic Conference 2 and  
Traffic Conference 3, respectively, and with the requirements of  
JT12(36)810d or JT123(30)810d, for tours produced in Traffic  
Conference 1 by IATA Members. For the purpose of this  
resolution, an Inclusive Tour shall provide for round or  
circle trip transportation wholly or partly over the lines of  
one or more IATA Members and must include in the published  
price:

(a) sleeping accommodation for the total duration of the round  
or circle trip, in hotels, motels (including commercially  
operated immobile caravans/trailers) or commercially  
operated pensions.

(b) at least one sightseeing or motorcoach trip (excluding  
transfers between airports and hotels) and

(c) The price of tour items in (a) (b) (c) above shall not be  
less than the amount specified in Paragraph (6).

(a) Notwithstanding (a) above, sleeping accommodations may be provided on means of public transportation which offer sleeping accommodations, provided that:

(i) such transportation and sleeping accommodation is featured in approved tour literature, and

(ii) at least U.S. \$35.00 (in the case of 14 day tours) and additionally, U.S. \$3.50 for each day in excess thereof, must be used to provide the features in (a) and (b) above, in addition to such public transportation; provided that the total price of the tour shall not be less than the price established in Paragraph (6) below.\*

Fares

\*(3)\* \*\*2\* that, subject to Resolution\*0\* 014a, \*060 and 060a,\* the fares shall be applicable:

(a) with reference to Sub-paragraph \*(1)\*(a) above, as set out in Column 1 of ATTACHMENT "A", all year, except that for travel originating during the following periods, the fares shall be as set out in Column 2 of ATTACHMENT "A";

(i) outbound transatlantic travel originating in U.S.A., Canada or Mexico (eastbound)

\*1970\*

\*5\* June - \*5\* July inclusive

\*31 July\* \*August\* - \*23\* August inclusive

(ii) outbound transatlantic travel originating in \*TC2\* \*\*Europe\* Middle-East\* (westbound)

\*1970\*

\*29 May\* \*June\* - \*21\* June inclusive

\*14\* August - \*6\* September inclusive

(b) with reference to Sub-paragraph \*(1)\*(b) above, as set out in Column 1 of ATTACHMENT "B", all year, except that for travel originating during the following periods, the fares shall be as set out in Column 2 of ATTACHMENT "B";

(i) outbound transatlantic travel originating in \*\*USA\* \*U.S.A.\*, Canada or Mexico (eastbound)

\*1970\*

\*5\* June - \*5\* July inclusive

\*31 July\* \*August\* - \*23\* August inclusive

(11) Outbound transatlantic travel originating in TOL  
(12) (Inbound)

\*1972\*

\*22 May - 22 June inclusive  
\*14 August - 16 September inclusive

\*(c)--notwithstanding paragraph (a) and (b) above, in 1967  
no travel shall be permitted over the Atlantic at the fares  
authorized by this Resolution on weekends between 0700 hours  
local time on Friday and 0700 hours local time on Monday  
during the period 22 May - 6 July inclusive, eastbound,  
or during the period 14 August - 16 September inclusive,  
westbound.\*\*

\*(c)\* \*\*\*(d)\*\* return (inbound) transatlantic travel shall be permissible  
at any time, subject to the provisions of Paragraph \*\*\*(6)\*\*  
\*(7)\* below:

\*(d)\* \*\*\*(e)\*\* subject to Resolution 024a, fares specified between two  
points in any attachment hereto take precedence over any  
lower combination of intermediate fares applicable between  
the same points;

\*(e)\* \*\*\*(f)\*\* combination of such fares with other fares shall not be used  
to alter the period of validity as provided in Paragraph \*\*\*(6)\*\*  
\*(7)\* below, nor shall half of such round trip be used to  
construct other types of round or circle trips over the Atlantic;

\*(f) that stopovers may be permitted as follows:

(i) for travel between TOL and Europe: 2 stopovers in Europe  
outbound and 2 stopovers in Europe inbound (exclusive of  
point of turnaround),

(ii) for travel between TOL and Middle East/Africa: a total of  
6 stopovers (exclusive of point of turnaround); provided  
that stopovers in Europe shall be limited to 2 inbound  
and 2 outbound,

(iii) for travel between TOL and India, Pakistan, Afghanistan,  
Ceylon and Nepal: a total of 8 stopovers (exclusive of  
point of turnaround); provided that stopovers outside  
the area of India, Pakistan, Afghanistan, Ceylon and Nepal  
shall be limited to 2 inbound and 2 outbound.\*

(g) sales of such fares in TOL shall be limited to the \*USA\*\*  
\*U.S.A.\*, Canada and Mexico.

Size of Group

\*(h)\* \*\*\*(3)\*\* that as used herein the term 'Inclusive Tour Group' shall mean a  
group of not less than 15 persons, provided that for JT123 traffic

the term 'inclusive tour group' shall mean a group of not less than 10 persons; provided further that for the purpose of computing the number of passengers, two halves of passengers shall be counted as one member of the group. \*and\* when provided that if at departure if the number of passengers is the group, in less than the required number of passengers, circumstances beyond the control of the carrier, the balance of the group may travel if the appropriate flight expense of the required number of tickets are secured, and no refund for refund, it being understood that this facility shall not be advertised, promoted or publicized in any way; this shall not preclude the quoting of such facility in company tariffs."

### Travel Together

"(4) that all members of the Inclusive Tour Group shall travel together as a single group on the one flight (a) for the entire itinerary, provided that:"

"(5) that all members of the Inclusive Tour Group shall purchase, and travel together on, the same Inclusive Tour (as defined in Paragraph (2) hereof) and as identified by the same approved Inclusive Tour Code Number for the entire itinerary, provided that:"

(a) when "operating conditions" the circumstances referred to in Paragraph (2) of Resolution 273, "whereby the carrier has no control" prevent their being so transported, some members of the group may be transported on the next preceding and/or succeeding flight on which space is available.

(b) except as provided in Resolution 215, "which Paragraph" the requirement to travel together shall not apply to any transportation in or between the "United States" "U.S.A.," Canada or Mexico, "when such transportation commences in the United States or Mexico."

"(c) for ground transportation portions of the Inclusive Tour, members of the group shall travel via the same points except as provided in (d) below, but need not travel at the same time; provided that this shall not prevent members of the group (or sub-groups described in (d) below) travelling together for different hotel accommodations or purchasing separate sightseeing arrangements (if these features are included in the tour itinerary); provided further that this shall not prevent individual members traveling between different points in the same country in the same month as the tour itinerary."

"(d) sub-groups may be permitted as follows:

for that portion of the travel not covered in the Group Inclusive Tour Form, the tour operator may permit the group to be divided into sub-groups, with separate and distinct itineraries, of not less than 5 persons in each, except within

the area comprised of India, Pakistan, Afghanistan, Ceylon and Nepal, where the sub-groups shall be not less than 10 passengers each. These separate itineraries must be identified by the same numeric IT designator, suffixed by "A", "B", etc., in the same tour literature and may be all air, all surface or combination(s) of both; provided that any air fares used as a part of these separate itineraries shall be normal or special fares which in themselves are combinable.\*

#### Minimum ~~Tour~~ Selling Price

- \*(6)\* ~~(5)~~ that the minimum ~~tour~~ selling price of the tour for the features in (2)\* shall not be less than the applicable group inclusive tour ~~base~~ fare, plus \$70 (U.S.), for the minimum stay period and additionally U.S. \$7.00 a day for each day in excess thereof,\* except that the minimum tour price related to the fares in ATTACHMENT "A" annotated with 'Note ~~(1)~~ (28)' shall be such applicable inclusive tour ~~base~~ fare plus U.S. \$59.00; provided further that if the Tour Operator allows a discount on land arrangements for children and infants, the minimum selling price for children and infants may be reduced accordingly.\*

#### Fare Validity

- \*(7)\* ~~(6)~~ (a) that with respect to Sub-paragraph (1) (a) above, tours based on these fares shall be valid for a period of not less than 14 days nor more than 21 days as specified in Resolution 070d(080d) and 070f(080f)\* provided that, notwithstanding anything in this or any other Resolution, where the actual length of the itinerary, including the date of departure, is 22 days, the maximum period of 22 days duration may be specified in the tour brochures ~~but the tour shall not be advertised as a 22-day tour~~;
- (b) that with respect to Sub-paragraph (1) (b) above, ~~tours based on these fares shall be valid for a period of not more than 28 days with a minimum stay in T03 of 16 days for tours commenced in T01 as specified in Resolution 080c and with a minimum stay in T01 of 16 days for tours commenced in T03; provided that~~  
\*return travel for tours based on these fares shall be completed by mid-night of the 28th day after the date of commencement of travel, furthermore tours commenced in T03 shall have a minimum stay in T01 of 14 days and tours commenced in T01 shall have a minimum stay of 7 days in T03; provided that the return travel on the flight coupon covering the west-bound transatlantic portion shall not be commenced prior to the 14th day after the date of commencement of outbound transatlantic travel shown on the flight coupon concerned.\* Notwithstanding anything in this or any other Resolution, where the actual length of the itinerary, including the date of departure, is 29 days, the maximum period of 29 days duration may be specified in the tour brochures ~~but the tour shall not be advertised as a 29-day tour~~.\*

**\*\*Payment of Tour and Tour Facilities**

(7) -- (a) -- that the tour shall be paid for in full prior to commencement of the tour and shall provide for round or circle trip transportation wholly or partly over the lines of one or more IATA Members, and shall include in their published price airport transfers and sleeping or hotel accommodation for the total duration of the round or circle trip plus any other facilities or attractions, such as sightseeing, motor coach trips, car rentals (but not including purchase of cars) -- provided that when sleeping accommodation is supplied other than by hotel, motel or pension, the cost of ground arrangements, other than sleeping accommodation, meals and car rentals, shall not be less than \$25 (U.S.).\*\*

**\*(c)\*** **\*\* (b) \*\*** that, subject to **\*\* Paragraph (6) hereof, \*\*** the foregoing Sub-paragraphs, the date of expiry of the ticket shall be shown in the 'Valid Until' box of the ticket and shall be the date following the last day of tour services provided for in the tour folder and paid for by the passenger before commencement of travel.

**\*\* (e) --** that tours commenced in TC1 shall be subject to the terms of Resolution 130/810e, as amended, tours commenced in TC2 shall be subject to the terms of Resolution 237/810e and tours commenced in TC3 shall be subject to the terms of Resolution 321/810e as amended. **\*\***

**Combinations**

(8) that these fares may be used only in combination with:

- (a) the \*group inclusive tour\* proportional fares in ATTACHMENTS "B" and "C" to Resolution 015 and/or fares within the area \*\* comprising \*\* \* comprised of \* the U.S.A., Canada and Mexico, subject to Paragraph (22) of Resolution 014;
- (b) fares within TC2 and TC3 <sup>1</sup> subject to Resolution 014.

**\*\*IT-Report-Form**

(9) -- that when the tour is subject to Resolution 129/810e, such fares shall be valid only if:

(a) -- an Air Tour Certificate is duly executed by the tour operator and sponsoring Member;

(b) -- the tour literature has been submitted to and approved by the sponsoring Member prior to commencement to the transportation to which such fare relates;



(c)---the-designated-Tour-Code-prescribed-by-IATA-is-shown-on---  
the-passenger's-ticket(s),-exchange-order(s),-tour-voucher(s)-  
and/or-miscellaneous-charges-order(s)-of-the-carrier(s);--

(d)---the-tour-operator-has-completed-in-full-and-validated---  
Section-I-of-the-Inclusive-Tour-Report-form-prescribed-in-  
Attachment-"B"-of-Resolution-120/8106-and-has-inserted-the-  
IATA-approved-Tour-Code-number,-thereby-certifying-that-  
an-approved-tour-for-which-he-holds-written-approval-has-  
been-sold;-and-

(e)---the-tour-operator-has-forwarded-each-Inclusive-Tour-Report-  
form-with-Section-I-executed,-in-duplicate,-to-the-selling-  
agent-who-in-turn-shall-have-completed-in-full-and-validated-  
Section-II;--The-selling-agent-shall-attach-one-copy-of-the-  
Inclusive-Tour-Report-to-the-Auditor's-coupon-of-the-Member's  
ticket(s);--

Note-1:---If-the-selling-agent-is-also-the-tour-operator,-he-shall-  
complete-and-validate-both-Section-I-and-Section-II-of-  
the-Inclusive-Tour-Report;--

Note-2:---The-provisions-of-paragraphs-(d)-and-(e)-above-are-  
not-applicable-when-the-Member's-tour-voucher(s),-exchange-  
order(s)-or-miscellaneous-charges-order(s)-are-used-to-  
cover-the-land-arrangement-price(s),-in-which-case-copy-  
of-such-vouchers,-exchange-orders-or-miscellaneous-charges  
orders-shall-be-attached-to-the-auditor's-coupon-of-the-  
Member's-ticket-in-lieu-of-the-Inclusive-Tour-Report;--

(10)-that-in-respect-of-tours-originating-in-TG2,-the-tour-literature  
must-be-submitted-and-approved-by-the-sponsoring-or-participating-  
Member(s)-prior-to-commencement-of-the-transportation-to-which-  
such-fare-relates;--\*\*

#### Documentation

\*\*(11)-that-all-vouchers-and-documents-applicable,-including-those-for-  
ground-arrangements-shall-be-available-for-inspection-during  
check-in-prior-to-commencement-to-the-outward-Atlantic-portion-  
of-travel-thereon;--\*\*

(11)\*\* \*(9) that there shall be vouchers specifying sleeping accommodations and vouchers specifying sightseeing tours, and other features of the tour. Such vouchers, including those for ground transportation, shall be available for inspection during check-in prior to commencement of the outward Atlantic portion of travel thereon.\*

(12)\*\* \*(10)\* that the inclusive tour "basing" fare shall be shown in the 'Fare' box on the Passenger Ticket.



Reduced Fare for Agents

~~11~~ (11) that Resolution 003 shall not ~~be applicable~~ apply.

Tour Conductor

~~12~~ (12) that ~~the same or reduced fare transportation authorized by~~ Resolution 004 shall ~~not be permissible~~ not apply.

Children's Discount

~~13~~ (13) that ~~the discounts authorized by~~ Resolution 201 shall ~~be applicable~~ only apply to the group inclusive tour fare.

Baggage

~~14~~ (14) that normal free baggage allowance and excess baggage rates shall apply.

Absorption of Passenger Expenses

(15) that notwithstanding any other resolution, a passenger's hotel, room, meal, ground transportation, airport service charge or transit tax expenses at scheduled stopping or connecting points shall not be absorbed.

Application ~~and Refunds~~ Ticketing and Payment

~~16~~ (16) (a) that not later than 30 days prior to commencement of travel, written application as shown in Attachment "C" shall be submitted to the Member whose tickets are to be issued (the Issuing Member). The application shall setting forth the names and total number of the passengers and the inclusive tour code number and signed by a person (hereinafter referred to as "The Travel Organizer") who shall be the Tour Operator or one commissionable passenger sales agent or, in the case of tours covered by Resolution JT12(36)210d, or JT123(30)210d, the person responsible for the travel arrangements of the inclusive tour group; ~~hereinafter referred to as the Travel Organizer) shall be submitted to the Member whose tickets are to be issued (the Issuing Member) not later than 30 days prior to commencement of travel together with a deposit of 25% of each of the inclusive tour fares involved, which shall be forfeited in the event of voluntary cancellation of the inclusive tour group, or any member thereof, for any reason. Not more than 5 names may be changed subsequently, not less than 15 days prior to commencement of travel.~~

(b) that tickets for all members of the group shall be issued not later than 21 days prior to commencement of travel, and not later than 15 days prior to commencement of travel the Travel

Organizer shall forward to the Issuing Member a carbon copy of the application showing the ticket number of the ticket issued to each passenger, the total number of which shall in no event be less than the minimum number prescribed in Paragraph (14). Thereafter normal reporting and remittance procedures as provided in Resolution 810a shall apply. After submission of the written application, but not less than 15 days prior to commencement of travel, not more than 5 names may be changed and ticketed subsequently.\*

\*Cancellation and Refunds\*

~~“(18)”~~ “(17)” that, ~~“except as provided in Paragraph (2)”~~ normal cancellation and refund procedures shall apply; ~~“provided that:”~~ ~~“provided that in the case of voluntary cancellation no refund of the deposit paid in accordance with Paragraph (17) shall be made if application therefor takes place less than 20 days prior to flight departure.”~~

“(a) in the event of voluntary cancellation by the Inclusive Tour Group or any member thereof less than 21 days prior to commencement of travel, 25% of the Inclusive Tour fare shall be withheld by the Issuing Member as a cancellation charge, except that in the case of replaced passengers referred to in Paragraph (16) full refund of individual fares may be made for each passenger so replaced.”

“(b) if at Departure Time the number of passengers in the group is less than the number contained in the Application prescribed by Paragraph (16) hereof but is equal to or more than the above required minimum number, the balance of the group may travel subject to forfeiture of 25% of the applicable fare by all non-departing passengers; or, if there are less than the above required minimum number, and the reduction in the number of departing passengers is caused by circumstances beyond the control of the non-departing passengers, the balance of the group may travel if the appropriate unused flight coupon(s) of the ticket of such non-departing passengers are deemed used and ineligible for refund. The Travel Organizer shall be responsible for determining which cancellation(s) reduced the group size below the required minimum and within five days following the scheduled departure date shall advise the Issuing Member which coupon(s) were forfeited. The Travel Organizer also shall be responsible for distributing refunds in accordance with the above procedure.”

~~“(18)”~~ “(18)” that, notwithstanding any other provisions of this Resolution, in the event of cancellation or re-routing by a member of the Inclusive Tour Group due to:-

- (a) death of the passenger en route, the difference, if any, by which the Inclusive Tour Group fare paid by the passenger exceeds the applicable fare for the sectors actually flown by the passenger calculated from the original point of origin may be refunded;
- (b) a death in the immediate family of a passenger occurring after the commencement of travel, the amount of the group fare paid by the passenger may be applied as a credit (but not in cash) towards the purchase of transportation at applicable fares for the sectors actually flown by the passenger, calculated from original point of origin. Similar credit towards the purchase of transportation at applicable fares may be made for other members of the Inclusive Tour Group who belong to the immediate family of such passenger;
- (c) a passenger, after commencement of travel, being unable to complete or continue his/her journey with the group due to illness, which must be substantiated by a medical certificate, the amount of the group fare paid by the passenger may be applied as a credit towards the purchase of transportation at applicable fares for the sectors actually flown by the passenger, calculated from original point of origin. Similar arrangements for transportation may be made for other members of the Inclusive Tour Group who belong to the immediate family of such passenger;
- (d) that in any of the circumstances described in Sub-paragraphs (a), (b) and (c) of this Paragraph ~~“(19)”~~, the remaining members of the Inclusive Tour Group, regardless of their number, shall continue with the itinerary, subject to all other conditions of this resolution.

#### Modification of Approved Itineraries

~~“(29)”~~ ~~“(19)”~~ ~~“Notwithstanding Resolution 3196,”~~ ~~“that”~~ modification of approved itineraries shall ~~“not”~~ be permitted “only when and to the extent modification of the itinerary of the entire Inclusive Tour Group is necessitated by circumstances beyond the control of the Tour Operator; provided that any such modification to an approved air itinerary required before the departure of a group shall be made only with the approval of the sponsoring Member and participating carrier affected, and provided further that this shall not permit modification to an approved itinerary due to lack of space on any given part of the original air itinerary; provided further that if circumstances beyond the control of the Tour Operator necessitate a substitution of facilities in the land arrangements, then the Tour Operator may make such substitution but only in substantially the same geographical location as in the original itinerary.”

\*Ticket Validity

- (20) that the provisions of Resolution 277 shall not apply except for Paragraph (1) thereof.

\*Definition of Stopover

- (21) that for the purpose of this Resolution, "stopover" means a deliberate interruption of the air journey by the group, agreed to in advance by the sponsoring Member, at a point between the place of departure and the place of destination, which includes tour features specified in the tour literature and/or an overnight stay with sleeping accommodations; provided that, when due to the scheduled time of arrival of the delivering carrier, no onward connection is available the same date, an overnight stay, including sleeping accommodations only, shall not be deemed to be a stopover; provided further that such overnight stay shall not be promoted nor shown in the tour literature other than where the daily schedule of the tour is shown and shall not be permitted at the through group inclusive tour fare more than once in any itinerary.\*

Meeting Non-IATA Competition

- ~~\*\*{21}\*\*~~ \*(22)\* (a) that where three North Atlantic Operators consider any fare or traffic practice contained or referred to in this Resolution materially damages their interest by preventing them from meeting a fare or practice of a non-IATA air carrier, such Members may reduce such fare or modify or suspend such traffic practice by rescinding it to the extent necessary; provided that where operations along the route or in or between the areas affected are conducted by not more than three North Atlantic Operators any one or more such Members may take such action; provided further:

- (i) that the Member(s) file(s) with the Secretary for circulation to all Conference Members, and confirm this by cabled notice to all Conference Members, a written notice, containing:-

- (aa) the fares charged or the practices in effect for transportation by the non-IATA air carrier and by the filing Members;
- (bb) the frequency of services operated by the non-IATA carrier and by the filing Members; and
- (cc) the type of equipment operated by the non-IATA carrier and by the filing Members; and
- (dd) the fare or modification or suspension of the traffic practice proposed to meet the conditions created by the acts or omissions of the non-IATA air carrier complained of.

- (ii) that three North Atlantic Operators may, alternatively file with the Secretary and each Conference Member a cabled notice containing the information specified in Sub-paragraph (a)(i) above; provided that where operations along the route or in or between the areas affected are conducted by not more than three North Atlantic Operators, any one or more such Members may take such action;
  - (iii) that any fare or modified or suspended traffic practice filed pursuant to Sub-paragraph (a)(i) of this resolution shall become effective 40 days after the date of filing with the Secretary and shall remain in effect until the date prescribed at the next Conference meeting, unless otherwise adjusted by the provisions hereof;
  - (iv) that any fare or modified or suspended practice filed pursuant to Sub-paragraph (a)(ii) of this resolution shall become effective as follows:
    - (aa) such fare or modified or suspended practice shall become effective 7 days after the date of filing if within that period no protest is received by the proposing Members and the Conference Secretary;
    - (bb) such fare or modified or suspended practice shall become effective 40 days after the date of filing if within 7 days of the date of filing a protest is received by the proposing members and the Conference Secretary; and
    - (cc) once effective, such fares or modified or suspended practice shall remain in effect until the date prescribed at the next Conference meeting, unless otherwise adjusted by the provisions hereof;
    - (dd) no Member shall be permitted to take formal government tariff filing action until the 16th day after the date notice was filed with the Secretary pursuant to Sub-paragraphs (a)(i) and (ii) hereof;
  - (v) that, except to the extent necessary to meet the situation, advertising and sale of such transportation, including issuance of exchange orders and issue wires, shall be limited to the country of commencement of travel at such fare.
- (b) that,
- (i) any Member may protest a filing made pursuant to Sub-paragraph (a)(i) or (ii) above, and may require



the Secretary to convene a meeting within seven days of the date of the filing of the protest and to notify promptly all Conference Members thereof.

(ii) at such meeting the protested fare(s) or traffic practice(s) and any related fare(s) or traffic practice(s), shall be subject to negotiation, and any new fare(s) or traffic practice(s) so agreed, including the one(s) filed, shall become effective as prescribed at such meeting;

(iii) if agreement is not reached at such meeting, and/or the three filing Members do not agree to withdraw the filing, any Conference Member may, not later than 15 days after the meeting, rescind this Resolution by notice thereof to all Conference Members through the Secretary.

(Note: As used in this Sub-paragraph (b), 'meeting' shall not be deemed a 'Conference meeting' as elsewhere used in this Paragraph ~~21~~).

(c) that, if after action has been instituted hereunder, the situation giving rise thereto has been remedied, the complaining Members shall forthwith advise the Secretary, for notification of all Conference Members, and 30 days thereafter the fare, or traffic practice shall be deemed re-instated to its original validity;

(d) that any relief accorded by this resolution shall be only along the routes or between the areas affected by the fare or traffic practice complained of, and any other Member may make corresponding changes to its fares or traffic practices, to the extent necessary to relieve itself to the same extent;

(e) that any action taken pursuant to this Paragraph ~~21~~ shall be subject to review by the next Conference meeting.

~~22~~ (23) that, notwithstanding Resolution 001, this resolution shall be subject to the provisions of Resolution 001b, shall not come into effect unless Resolution 001b comes into effect, and shall remain in effect only so long as Resolution 001b shall remain in effect.

(ATTACHMENTS "A" and "B" published separately)

(END)

Filing Period  
24 February, 1969 -  
24 April, 1969

Effective Date  
1 November, 1969

## FARES FOR ROUND TRIP

(NSW)

JT12(39)150a (North & Mid Atlantic)  
JT123(33)150a (North & Mid Atlantic)

Expiry Date: 31 March 1971

Type: A

## RESOLVED,

- (1) that notwithstanding any other resolution, but subject to Resolution 014a, there shall be no discount for a round trip.
- (2) that the fare for a round trip shall be the sum of the applicable outbound and inbound through one-way fares, between place of departure and place of turn-around, specified or constructed in accordance with Resolution 014a; provided that, where a discount is applicable to round trip domestic travel, the through round trip fare may be the sum of the domestic round trip fare and the international round trip fare; provided further that the inbound as well as outbound portion of the ticket is purchased in advance of the outbound trip.
- (3) that first or economy/tourist class round trip fares which by their terms are combinable may be used with other fares on the basis of half the round trip fare instead of the one-way fare referred to in Paragraph (2) above.

(END)

## Filing Period

24 February, 1969-  
24 April, 1969

Effective Date  
1 May, 1969



UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board  
at its office in Washington, D. C.,  
on the 4th day of April, 1969

-----  
Agreements adopted by Joint :  
Conferences 1-2 and 1-2-3 of the:  
International Air Transport :  
Association (IATA) relating to :  
transatlantic fares :  
-----

Docket 20781  
Agreement C.A.B. 20848  
R-1 through R-12  
and R-14 through R-68

ORDER

By Order 69-3-1, the Board, among other things, established procedural dates for the receipt of documentation, complaints and answers<sup>1/</sup> relating to an agreement embodied in resolutions of the International Air Transport Association (IATA) establishing transatlantic fares for the period May 1, 1969, through March 31, 1971.

By petition filed March 7, 1969, the member carriers of the National Air Carrier Association (NACA) requested the Board to reconsider its Order 69-3-1, and to institute immediately an evidentiary investigation of the resolutions. Subsequently, by motion filed March 18, 1969, NACA modified its position by requesting that the Board extend the procedural schedule to afford 14 days for complaints and objections, the period to run from the date upon which the IATA carriers supplied full documentation, or until they have complied with the subpoena duces tecum which had been applied for by NACA. In the motion filed March 18, NACA requests a full evidentiary investigation of the challenged fare agreements only in the event deferral of procedural dates is not granted. Pan American has filed an answer requesting denial of NACA's initial petition for reconsideration, and has expressed opposition to the subsequent NACA motion, especially if it would delay the Board's decision beyond May 1.

On March 18, 1969, the Board's Chief Hearing Examiner issued a subpoena duces tecum to Trans World Airlines, Inc., (TWA), Pan American World Airways, Inc., (Pan American), Seaboard World Airlines, Inc., (Seaboard), and to IATA,

<sup>1/</sup> The procedural dates established by the Board were:  
Full documentation and economic justification from  
the carriers  
Complaints and objections from interested parties  
Answers to complaints

March 13, 1969  
March 27, 1969  
April 7, 1969

directing them to produce, inter alia, documents relating to negotiations and deliberations of IATA or any of its committees prior to the adoption of the resolutions. <sup>2/</sup> Subsequently, the Chief Hearing Examiner deferred the March 27 date for filing complaints to April 4, and the April 7 date for filing answers to complaints to April 11, thus substantially responding to NACA's request. At the same time, NACA's motion to suspend the procedural schedule established by Order 69-3-1 was denied.

Hertz International, Ltd., filed a motion on March 25 requesting suspension of the procedural schedule pending clarification by the carriers as to the scope and intent of the resolutions with respect to the exclusion of car rentals as part of regular tour packages. <sup>3/</sup> Also, comments in support of and in opposition to the agreement have been filed by other organizations, agents, and individuals. <sup>4/</sup>

The pleadings and the comments raise issues of discrimination, reasonableness, adverse impact on supplemental carriers and third parties, and public interest in general. Nevertheless, we are not persuaded at this time that a full evidentiary hearing is required to resolve the public

<sup>2/</sup> The carriers and IATA supplied certain data in response to the subpoena on March 25.

<sup>3/</sup> In this respect, it is stated, among other things, that: "...it appears clear that the movants cannot be fairly expected to know whether the subject IATA resolutions, or any of them, do exclude car rentals from the required tour package for fare eligibility." Also this firm contends "there has not been the slightest scintilla of evidence presented by the carriers to justify the exclusion of rental cars from the required tour package."

<sup>4/</sup> The Creative Tour Operators Association (CTOA) supports the contract bulk fare, but suggests that the Board consider imposing a condition restricting the purchasing of capacity for tours sold and originating in the United States to that purchased by IATA-approved agencies; some agents have protested the contract bulk fares, primarily because they are non-commissionable; the City of Philadelphia and the Greater Philadelphia Chamber of Commerce oppose the agreement, alleging, in effect, that the pattern of North Atlantic fares discriminates against Philadelphia in favor of New York; the National Industrial Traffic League opposes approval of the agreement, alleging, inter alia, that the elimination of the five-percent round-trip discount discriminates against business travelers; and complaints have been received from individuals and from agents protesting the elimination of the round-trip discount. Also, a question has been raised by the comments as to the reasonableness of the refund provisions of the bulk fares.

Interest considerations. However, in light of the considerable controversy surrounding the agreement the Board has concluded that the public interest warrants setting the matter for oral argument. Since we are herein setting oral argument, and in view of the relatively short period of time available for consideration of the agreement, we do not believe a further extension of present procedural dates would serve a useful purpose.

Accordingly, pursuant to the provisions of the Federal Aviation Act of 1958, and particularly sections 201, 204(a), and 412 of the Act,

IT IS ORDERED THAT:

1. On April 15, 1969, at 10:00 a.m., the Board will receive oral argument on the question of approval of the subject resolutions,
2. Interested persons who desire to participate in such oral argument shall advise the Board in writing of their desire to participate. Complaints and objections from interested parties or persons in affidavit form shall be filed with the Board's Docket Section in an original and 19 copies on or before April 4, 1969, and answers thereto on or before April 11, 1969,
3. Except to the extent otherwise granted, NACA's petition of March 7 and motion of March 18 are denied, and
4. Except to the extent otherwise granted, the motion of Hertz International, Ltd., to suspend the procedural schedule is denied.

This order will be published in the Federal Register.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON

Secretary

(SEAL)

BEFORE THE  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D. C.

----- x

IATA TRANSATLANTIC FARE AGREEMENTS	:	Docket 20781
		Agreement CAB 20848

----- x

ANSWER OF TRANS WORLD AIRLINES, INC.  
TO COMMENTS AND OBJECTIONS

Trans World Airlines, Inc. hereby respectfully submits, pursuant to Order 69-3-1, its Answer to complaints and objections filed with respect to Agreement CAB 20848. TWA urges Board approval of the subject IATA transatlantic fare agreements on the ground that they are not adverse to the public interest or in violation of the Federal Aviation Act.

Objections to the proposed fare agreements have been filed by the National Air Carrier Association (NACA) as attorney-in-fact for its member Supplemental Carriers as well as by the American Society of Travel Agents (ASTA) and other parties. While TWA will make reference herein to various aspects of the objections of NACA, it should be noted at the outset that the views presented by NACA are predicated upon

a misleading and distorted concept of the nature of this proceeding. Thus, contrary to the seeming insistence of the Supplementals, the present matter is not a rate proceeding. Rather, the present proceeding is a matter arising under Section 412 of the Act subject to Board scrutiny under public interest standards, and the decision to be made is whether or not the agreements in issue shall be approved. Indeed, aside from the antidiscrimination provisions of the Act the normal ratemaking provisions and standards are inapplicable to the fares which are the subject of the agreements before the Board, and in no event can they be deemed to be controlling considerations under Section 412 of the Act. "Section 412 requires that the Board approve all agreements which are not found to be adverse to the public interest." (Order E-25153, May 16, 1967).

While the Board may wish to consider the reasonableness of the rates herein involved from the standpoint of economics, this consideration cannot be paramount, and certainly cannot constitute the sole factor which the Board takes into account in making the requisite determinations as to whether the agreement is in the public interest under Section 412. In this context, therefore, the question presented is not whether each and every fare covered in the agreements is independently justifiable on the ground that it covers "fully allocated" or

other appropriately allocable costs, but rather whether the total package proposed is economically justified and not contrary to the public interest. This follows logically from the undisputed fact that the agreements in question were the result of lengthy negotiations between all the IATA carriers having divergent views and interests and, in general, are the product of compromise. The Board is well aware of the "give-and-take" necessary to the consummation of agreements of this nature, and is well aware that no single carrier or group of carriers can achieve all of its objectives, and indeed in some instances will have to agree to one aspect of another carrier's proposal in order to obtain adoption of some aspect of its own program.

Consequently, in these circumstances it would be unreasonable to expect each carrier to justify the economic posture in which it finds itself with regard to each and every item of the total package, and the Board has never required such a precise showing. Realistically, it can only be expected that a carrier be able to justify the total impact of the fare agreements insofar as they relate to the public interest and its own economic well-being.

Furthermore, it cannot be too strongly emphasized that the proposed fares are, in large part, promotional in nature and constitute a competitive response to the pressures of Supplemental carrier operations. Additionally, TWA views



the proposed package as a viable means whereby not only existing traffic and traffic sources will continue to be stimulated and developed, but also a means whereby new sources of traffic will be tapped and induced to join the transatlantic market pool which of necessity must continuously be expanded to support adequate and economically sound scheduled services. The Board has always recognized the necessity to maintain the strength of its U.S. scheduled carriers, who are charged with the responsibility of providing a reasonably competitive volume of scheduled services despite frequent low load factors:

"The economic health of the U.S. certificated transatlantic carriers is a matter of prime concern to the Board in the public interest. These carriers are required by their certificates of public convenience and necessity to perform regularly scheduled transportation for the general public in good years as well as bad years, in the off-season as well as the peak season, and over their thin 'national interest' routes as well as the lush North Atlantic." IATA Group Fares Agreement 36 CAB 33, 40 (1962).

With regard to their impact on the travelling public, it cannot be and is not disputed by any of the objecting parties that the instant agreements will make available to the public additional programs whereby transportation abroad may be had at a substantially lower price than is now possible on scheduled services, and there is no basis on which to conclude that this type of benefit can or should be passed on to the public only by the Supplemental Carriers. The new low fares as well as the removal of restrictions on the availability of existing ones



will provide the travelling public with greater opportunities to obtain low cost transportation and to utilize these promotional fares. Clearly, so long as the overall economic position of the scheduled carriers is not jeopardized, such a result is in the public interest, despite the resulting competitive pressures which this may place on the Supplemental Carriers. There is no constitutionally protected freedom from competition as long as it is not predatory or oppressive, and the Federal Aviation Act provides for none either except to the extent that such may be found to be necessary in the public interest. Thus, the Board in Transatlantic Charter Investigation, Order E-24240, p. 9 reiterated its long-standing recognition of the right, and indeed the desirability, of scheduled route carriers to meet competitive actions of the Supplementals in the precise manner provided in the agreements here in question:

" . . . among the means which the route carriers have to meet the additional competition offered by inclusive tours is their own ability to offer promotional fares which will appeal to persons who would not otherwise have the means to pay the higher economy fare and who would prefer to use the services of the scheduled carriers."

And, in the context of an IATA agreement to establish a price for inflight entertainment, the Board again stated that it:

" . . . has long recognized that there are public benefits to be derived from agreements among carriers with respect to providing services in foreign air transportation where competitive pressures are comparatively great and where the Board has limited authority over fares and rates

. . . the instant Agreement is in full accord with our longstanding approval of the basic I.A.T.A. concept, and nothing has been presented here which indicates that special standards should be applied in this situation. . .". (Order E-23708, May 20, 1966, p. 3).

Similarly in the present case, nothing has been shown to exist which should prompt or require the Board to depart from past precedent.

Furthermore, one of the very basic purposes of Supplemental Carrier operations appears to have been to create a competitive spur to induce price competition between carriers (e.g. Large Irregular Air Carrier Investigation, 22 CAB 838, 860 (1955); ACTA-IMATA Commercial Charter Exchange Investigation, 22 CAB 760, 817 (1955)). And, it is anomolous, indeed, that the Supplemental Carriers now appear to be requesting protection from the competition which they were designed to induce. Their request to establish a barrier below which scheduled carrier prices cannot go in competing with them merely because such would be "too close for comfort" to the Supplemental Carrier price levels, is plainly contrary to the purpose for their existence, to the intent of the antitrust laws, and to the Board's duties under the Act to foster competition as well. There has been no showing, and TWA is not aware, that the fares contained in the subject agreements will have such a substantial adverse effect on the Supplemental Carriers as to undermine their economic well-

being. The IATA fare agreements would not result in any undercutting of Supplemental price levels and the conditions which apply to the several types of fares in any event tend to reduce the "value" of the fares to the public and compensate for the proximity of the fares. While some of the fare levels may not be at the precise levels at which TWA would chose to place them, such are the function of the IATA process and in large measure are responsive to the levels the Supplemental Carriers themselves chose to adopt in their services.

A. Elimination of the Roundtrip Discount Is Justified.

The consensus of opinion of the IATA carriers, which is borne out by the experience of TWA, is that there is no economic justification for retention of the 5% roundtrip discount in the transatlantic market which, it should be noted, is the only remaining area in which such a discount is presently offered. The discount was originally introduced by the carriers in the expectation that certain benefits would accrue in terms of control over the travel habits of the public with consequent advantages in planning e.g. allocation of equipment. Experience in our domestic operations indicates that there was no appreciable change in these habits after the Board permitted a similar 5% domestic roundtrip discount to be removed in 1958. Our judgment is that the same result will obtain in the international market, and we find no valid basis in the contrary contentions of ASTA.

Furthermore, any cost savings which may be produced by issuance of one roundtrip ticket as opposed to issuance of two oneway tickets are, we believe, minimal, if not entirely nonexistent, and in no event can a cost saving in the amount of 5% be substantiated in regard to transatlantic Economy transportation. Finally, it should be noted that any cost savings that might accrue due to purchase of a roundtrip ticket vis a vis two oneway tickets are largely dissipated when reservation changes are made overseas by roundtrip ticket holders.

NACA argues that elimination of the roundtrip discount is unjust vis a vis the Economy passenger because such "increase" in fare subsidizes lower yield traffic. First, of course, as demonstrated above, there is no justification for continuation of the subject discount. Accordingly, it prejudices nobody to remove it. Second, the Economy fare levels (which significantly will remain at their present levels) are not unduly high and hence do not "subsidize" other classes of traffic even though they obviously bear a different share of the cost burden than do the fares applicable to lower rated traffic. Third, it is TWA's belief that retention of the roundtrip discount may well unduly favor the roundtrip Economy passenger versus the oneway Economy passenger since 'the services are the same for both, there is an absence of any factors which

render the circumstances and conditions substantially dissimilar for one as compared to the other, and no cost differences appear to exist to justify the price differential.

Moreover, it is clear that the Board has not regarded the roundtrip discount, per se, as sacrosanct. The Board merely stated in its letter, dated October 15, 1968, that "... any change in the roundtrip discount should be accompanied by offsetting fare adjustments." And, TWA's economic justification, dated March 12, 1969, clearly shows that appropriate offsets have been provided. NACA's position that an appropriate offset must, of necessity, result in a revenue loss to TWA is patently unreasonable. We believe the Board is entitled to look for other offsetting public benefits, even though they also result in benefits to the carrier, in return for the increased revenues the carriers will receive from the roundtrip discount elimination, and such benefits are plainly provided as pointed out in our letter of justification. But, no more should be required.

The Board's concern in this area is limited. It should be concerned only with whether the resulting fares are unduly inflated. A comparison between Economy fares and other promotional fares for this purpose is not appropriate, especially when, as here, competition has been a major factor prompting introduction and maintenance of the lower promotional fares.

Rather, an evaluation of both the oneway and roundtrip Economy fares, based upon the 1968 revenue yield per mile figures contained in Attachment I to TWA's letter of justification, will show that they are well within any zone of reasonableness.\*

B. The Bulk and Group Fare Agreements are a Lawful Response to the Competition of Supplemental Services and Will Provide for Continued Growth of Traffic and Better Utilization of Equipment.

TWA supports the proposed IATA Bulk and Group Fare Agreements as responsive to the financial needs of the scheduled carriers. Simply stated, the IATA carriers as a group sought to effectuate an agreement whereby competitive and economically sound fares would be offered to the public. These fares were designed, in part, to enable the carriers to meet competition afforded by Supplemental Carrier operations, which competitive goal entails not only the recapture of a share of the market already lost; but also, and perhaps more importantly, the retention of that share of the market presently held by the scheduled carriers (see Exhibit V, page 2 and Exhibit VII, page 1 of TWA's justification). The instant agreements are also viewed as a means whereby the carriers' equipment used in scheduled services will be more efficiently utilized through load factor improvements.

\* For instance, NACA states that our available seat mile cost is 2.57 cents (p. 22). Compare this to the yields of Economy fares



IATA carriers' share of transatlantic traffic has been substantially reduced by the charter operations of the Supplemental Carriers during the past five years. From 1963 to 1968 there has been a 2.5 percentage point drop in the scheduled carriers' share of transatlantic traffic as well as a 4.1 percentage point drop in IATA carrier share of charter traffic. The ITC authority recently granted the Supplementals can only accelerate this rate of reduction. Based on TWA traffic results to date and in the absence of more competitive pricing by the scheduled carriers, there is a distinct possibility that North Atlantic carriers would lose upward of 20% of their passengers on scheduled services, or two-thirds of their tour business by 1973. The prospects, therefore, are bleak under any standard, and a loss of this magnitude, if allowed to go unchecked, would obviously result in a significant deterioration of scheduled services and would have a serious impact upon the overall financial stability of the scheduled carriers.

As previously stated herein, there is no rule of law or reason that should be invoked by the Board to protect NACA members from economically sound competition by the scheduled carriers. There has been no evidence offered which would indicate that the financial well-being of the scheduled carriers would be in any way jeopardized by the introduction of the new promotional fares. Quite the contrary, TWA's justification



indicates that along with providing the public with reduced fares, its financial position will be improved under the subject fare agreements. The charges to the contrary by the Supplemental Carriers and their claim that the new promotional fares are part of a grand design by the scheduled carriers to eliminate them are bottomed on sheer conjecture, and such has never been deemed sufficient ground for disapproval of an agreement (IATA Group Fares Agreement, 36 CAB 33 (1962)). Despite reams of quotations from various IATA members and conference officials, NACA has been unable to produce one iota of evidence to justify their persecution complex.

A clear analogy exists between the present situation and the one which faced the Board in the IATA Group Fares Agreement case. The Board there stated:

"Despite the charges of the Part 295 carriers, we are unable to find that the group fare resolution was motivated by a predatory intent to eliminate non-IATA competition. The record establishes a primary design to (1) tap any traffic sources, and (2) eliminate the economy waste involved in the carriage of passengers on IATA carrier charters while the same carriers scheduled flights are carrying excessive empty seats. Obviously, the IATA carriers were aware that the group fares would divert traffic from their competitors, but the record will not support the contention that the group fare is in the nature of a "fighting ship." (36 CAB 33, 38).

The Board went on to state that certain documents submitted for the purpose of showing a design to eliminate Part 295 carriers in fact showed only that "a legitimate (emphasis added) desire to attract traffic moving on competitive

non-IATA carriers was a consideration in favor of the group fares." (at pp. 38-39). The same condition exists today, and the same result should obtain.

C. Possibility of Diversion from Supplemental Services Does Not Warrant Disapproval of the Agreement.

NACA further insists that large numbers of passengers will be diverted from charters of its Members, but has produced no estimates as to what percentage or quantity of traffic will be diverted. While TWA cannot dispute the fact that large numbers of the travelling public may consider it to be in their best interests to utilize the services offered by the scheduled carriers, TWA does take issue with NACA's allegation that the bulk and affinity group fares are "virtually at the level of charter rates."

Obviously, there will still be a meaningful price differential between these fares and full plane load charter rates.\* Furthermore, a myriad of restrictions attached to the different fares (see Attachment A of NACA's complaint) must be considered in conjunction with price as having a bearing upon diversion. Additionally, there is no basis to conclude that the fares in question would result in elimination of demand for charter services. The Board stated in IATA Group Fares Agreement that "... quite apart from price considerations, the opportunity to occupy an entire airplane would be considered

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\* See Attachment II.

advantageous to many large groups who desire to travel together as a unit." (36 CAB 33, 39).

TWA cannot state that there will be no diversion or that such diversion will be entirely offset by a general rise in transatlantic traffic. However, it is clear that over the past five years all diversion that has taken place has been at the expense of the IATA carriers' scheduled and charter services (see Attachment 1). Also, despite the dire predictions of the Supplementals with regard to a diversionary impact of group fares in 1962, it is clear that they have not suffered adversely. In fact, in 1963 the Supplementals controlled 1.8% of the transatlantic passenger market while today their share has increased to 8.4% (see Attachment I).

In any event the possibility of diversion is not sufficient in and of itself to warrant disapproval of the instant agreements. The test relied upon by the Board in determining whether the economic impact of the IATA group fare agreement in 1962 on the 295 carriers was of such nature as to justify Board disapproval was whether "any such loss will imperil the existence of the Part 295 carriers." NACA has submitted no evidence or even a meaningful estimate that the existence of its member carriers will be imperiled in the event the instant agreements are approved.

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\* We note that the revenue and profit positions of the Supplementals are very sound and that their share of the transatlantic charter market has reached 40% (see Attachment III).

With respect to the antitrust considerations raised by NACA, TWA concedes that virtually all IATA agreements would violate the Sherman Act absent Board approval. Historically, the Board has approved such agreements, however, on the theory that absent approval the resulting competitive situations, which would include service and price wars, would adversely affect the public interest. There is no evidence here, which would indicate that the Board should change its policy or that approval of IATA agreements generally are no longer "required by serious transportation needs" or "required in order to secure important public benefits."

Therefore, we must proceed from the premise that IATA agreements are generally in the public interest. The only conceivable antitrust consideration that possibly remains is whether the competitive response of the IATA carriers to the actions of the Supplementals is prohibited.

It is clear that "[P]rice reduction in a competitive situation is not a wrong in itself. It can become a violation of Section 2 of the Sherman Act only if shown to be motivated by a specific intent to drive a competitor or competitors from the field." (Gold Fuel Service, Inc. v. S O Standard Oil Co., 306 F.2d, 61, 64 (1962)). As previously shown there is nothing within or without the record indicative of such intent on the part of the IATA carriers.

\*\*\*

E. Persons Marketing TWA's Bulk Fares are not Engaged in Indirect Air Transportation.

\* \* \*

F. Promotional Fares Contained in the Agreements Are Neither Unjustly Discriminatory Nor Unduly Preferential or Prejudicial.

It is submitted that no unjust discrimination or undue preference or prejudice exists with regard to the proposed IATA agreements.

Unjust discrimination arises where different charges are assessed against like and contemporaneous services pertaining to like traffic rendered under substantially similar conditions and circumstances. Clearly, conditions of service vary considerably between the several promotional fares, and none are like or similar to those conditions applicable to Economy fare passengers. The differentials between the fares, moreover, are not unreasonable when viewed from value of service and cost standpoints.

Finally, the previously referenced competitive pressures of Supplemental Carriers are a special circumstance that serves to justify any preferential or discriminatory aspects of the fares (see Transcontinental Bus System, Inc. v. CAB, 383 F.2d 466 (5th Cir. 1967); Passenger Credit Plans Investigation, 37 CAB 404 (1963)).

Perhaps nowhere is the competitive impact of the NACA members more apparent than in the California-Europe market. On the basis of an analysis of the Board's T-6 reports

and Bureau of Census I-94 Forms, it is estimated that Supplemental Carriers accounted for at least 27% of the total California-Europe passenger market. And, the estimate in our letter of justification indicates that the Supplementals may capture as much as 50% of the California-Europe market in 1969. It was this prospect that prompted the special proportioned fare proposal for that market. In short, the scheduled carriers simply cannot afford to disregard the serious threat of loss of business in this important market and, hence, were forced to make extraordinary provision to compete.

Insofar as the incentive tour fares are concerned, TWA supports them as an attempt to make low fare transportation available to a market virtually untapped by scheduled services because this type of traffic does not qualify under existing affinity rules. Again, therefore, we are attempting to fill unused seats and obtain a better utilization of our scheduled services.

Finally, the contention that bulk and GIT fares are unjustly discriminatory on the ground that purchase of land accommodations are required, is as much without foundation today as when first raised with respect to group inclusive tour-basing fares in 1967. At that time the Board stated:

"The tie-in feature with the purchase of ground accommodations does not seem to be an unreasonable one in view of the considerable discount these fares



provide from normal and other fares. Moreover, these fares, coupled with attractive tours in the United States, Europe, and countries in the Middle East and Far East, should prove to be strong stimulus to airline traffic. The lower price of such tours made possible by the lower cost of air transportation should enable many persons to travel by air who would not otherwise be able to use air transportation. In the long run, additional volumes of traffic will afford a broader base over which to spread costs and should enhance the possibility of lower normal fares." (Order E-27823, page 5).

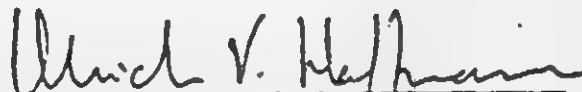
WHEREFORE, Trans World Airlines, Inc. respectfully requests that the Board (1) find that the subject Agreements are not adverse to the public interest or in violation of the Federal Aviation Act, and (2) approve them.

Respectfully submitted,

TRANS WORLD AIRLINES, INC.

April 11, 1969

By



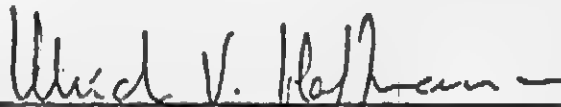
Ulrich V. Hoffmann

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Answer upon each person who served TWA with a copy of its complaint or objections pursuant to Order 69-3-1, by causing a copy to be delivered or mailed, postage prepaid, to each of them or their respective attorneys.

April 11, 1969

New York, New York



Ulrich V. Hoffmann



TRANSATLANTIC PASSENGER TRAFFICMARKET SHARESCHARTER VS. SCHEDULED SERVICE

	<u>IATA Scheduled</u>	<u>IATA</u>	<u>Charter Supplemental</u>	<u>Total</u>
1963	86.9%	11.3%	1.8%	13.1%
1964	86.6	10.9	2.5	13.4
1965	86.4	9.8	3.8	13.6
1966	86.2	9.1	4.7	13.8
1967	84.9	8.1	7.0	15.1
1968*	84.4	7.2	8.4	15.6
Change <u>1968 vs. 1963</u>				
	(2.5)% pts.	(4.1)% pts.	6.6% pts.	2.5% pts.

\*Estimate based on Jan.-June, 1968 Data

## TRANS WORLD AIRLINES, INC.

Page 1 of 2

COMPARATIVE FARES PER PASSENGER MILE  
SCHEDULED SERVICE VS. SUPPLEMENTAL CARRIERS

		NYC-LON		LAX-LON	
		RT Fare	Fare Per Mile	RT Fare	Fare Per Mile
<u>SCHEDULED SERVICE</u>					
First Class		\$750.00	10.85c	\$1,090.00	9.99c
Regular Economy		420.00	6.08	710.00	6.51
Peak Economy		510.00	7.38	800.00	7.33
14/21 Day Excursion	- Regular	300.00	4.34	590.00	5.41
	Peak	350.00	5.06	640.00	5.87
14/21 Day Individual IT	- Regular	270.00	3.91	560.00	5.13
	Peak	320.00	4.63	610.00	5.59
14/21 Day Group IT	- Regular	238.00	3.44	450.00	4.12
	Peak	288.00	4.17	500.00	4.58
Bulk Affinity	- Off	200.00	2.89	330.00	3.02
	Shoulder	212.00	3.07	342.00	3.13
	Peak	250.00	3.62	380.00	3.48
Bulk IT	- Off	175.00	2.53	305.00	2.80
	Shoulder	190.00	2.75	320.00	2.93
	Peak	220.00	3.18	350.00	3.21
TWA Charter	- Off	161.68	2.34	255.25	2.34
	Shoulder: Week	161.68	2.34	255.25	2.34
	Weekend	181.89	2.63	287.16	2.63
	Peak : Week	202.11	2.92	319.06	2.92
	Weekend	222.32	3.22	350.97	3.22

SUPPLEMENTAL CARRIERSA. General Charter Rates

TIA (All year, U.S.-Europe)	131.32	1.90	207.33	1.90
Other Carriers (see page 2)				

B. Examples of Point to Point Rates

Effective Date	Carrier	From	To	Fare	Seat Mile Cost
Exp 4/10	Capitol	NYC	LON	OW \$ 68.94	1.99c
3/27	Saturn	NYC	FRA	RT 121.80	1.58
5/1-6/13	Caledonian	NYC	LON	OW 77.85	2.25
3/7	Saturn	OAK	LON	OW 90.45	1.65
3/19-6/30	Caledonian	BDL	LON	OW 50.00	1.49
8/16-12/30	Caledonian	BDL	LON	OW 50.00	1.49
1/1-1/31	World Airways	LON	LAX	RT 159.00	1.46
All Year	Caledonian	LON	NYC	RT 80.98	1.17
3/10-3/20	Capitol	ROM	NYC	OW 72.13	1.65
3/20	Saturn	BRU	NYC	OW 56.00	1.53

COMPARATIVE TRANSATLANTIC COMMERCIAL CHARTER RATES PER SEAT MILE (IN CENTS)  
EASTBOUND 1969

Carrier	Seats	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
<b>SUPPLEMENTALS</b>													
Caledonian	186	2.26											→
Capitol	250	2.40											→
	183	2.46											
	165	2.42											
Saturn	250	2.20											
	226	2.21											
	203	2.22											
	180	2.22					3.33	14th → 2.72	18th → 2.11	23rd → 2.22			→
Trans	250	1.90											
International	238	1.92											
	219	1.95											
	200	1.97											
	180	2.00											
	165	2.10											
	145	2.20											
World Airways	165	2.12											

U.S. SUPPLEMENTAL AIRLINESREVENUES - PROFITREVENUES

	<u>TOTAL</u>	<u>COMMERCIAL</u>	
	<u>\$000</u>	<u>\$000</u>	<u>% of Total</u>
1963	\$ 92,697	\$ 19,466	21%
1964	105,802	29,625	28%
1965	143,316	56,174	39%
1966	212,491	79,796	38%
1967	263,292	111,825	42%
1968 *	312,370	136,380	44%

PROFIT

	<u>OPERATING PROFIT</u>		<u>NET PROFIT (after taxes)</u>	
	<u>\$000</u>	<u>% of Revenue</u>	<u>\$000</u>	<u>% of Revenue</u>
1963	\$ 5,158	5.6%	\$ 2,675	2.9%
1964	16,813	15.9%	8,477	8.0%
1965	23,685	16.5%	13,947	9.7%
1966	37,764	17.8%	22,497	10.5%
1967	36,146	13.7%	21,070	8.0%
1968	44,581	14.2%	20,511	6.6%

SOURCES: CAB  
National Air Carrier Association

\* 12 months ending September 30th

CHARTER STATISTICS  
TRANSATLANTIC CHARTER MARKET  
1963-1968  
(Thousands of Passengers)

Page 2 of 2

Annual

<u>Year</u>	<u>LATA Carriers</u>					<u>Supplementals</u>			<u>Total</u>	<u>F</u>
	<u>TWA</u>	<u>PAA</u>	<u>U.S.Flag</u>	<u>Foreign Flag</u>	<u>Total IATA</u>	<u>U.S.Flag</u>	<u>Foreign Flag</u>	<u>Suppl.</u>		
1963	9	15	24	257	281	35	11	46		
1964	5	16	21	330	351	67	13	80		
1965	5	39	44	321	365	107	36	143		
1966	12	62	74	315	389	168	36	204		
1967	37	98	135	278	413	279	81	360		
1968	39	95	134	258	392	343	115	458		

Percent Distribution by Type of Carrier

1963	3%	4%	7%	79%	86%	11%	3%	14%
1964	1	4	5	76	81	16	3	19
1965	1	8	9	63	72	21	7	28
1966	2	11	13	53	66	28	6	34
1967	5	12	17	36	53	36	10	46
1968	5	11	16	30	46	40	14	54

Average Annual Growth

34	46	41	0	7	58	60	59
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SOURCES: IATA  
CAB  
Systems Analysis and Research Corp.

BEFORE THE  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D. C. 20428

- - - - - x  
IATA Transatlantic Fare : Docket 20781  
Agreements : Agreement CAB 20848  
:   
- - - - - x

ANSWER OF PAN AMERICAN WORLD AIRWAYS, INC.

Pursuant to Order 69-3-1, various complaints and objections have been filed in the above matter relating to an agreement embodied in resolutions of the International Air Transport Association (IATA) establishing transatlantic fares for the period May 1, 1969 through March 31, 1971.

Pan American World Airways, Inc. (Pan American) hereby submits its answer to the complaints and objections and requests that they be denied. Pan American further requests that the Board issue an order approving the agreements under Section 412 of the Act.

I.

INTRODUCTION

Before turning to the specific items in the complaints and objections, a few general considerations regarding this important agreement are in order. The

agreement was designed to bring lower cost transportation to the traveling public, and to attract increasing volumes of traffic to transatlantic scheduled services so as to meet the challenges of the 747 era. In the present inflationary spiral in our economy, the 747 aircraft offers one of the best opportunities available for holding down fare increases that would otherwise be required. However, in order that the 747 may be operated in the most efficient and economic environment, it is necessary that the carriers have the ability to tap new traffic markets through lower fares.

Another pertinent consideration is the recognition of the unique character of the North Atlantic travel market and the necessity for a wide-ranging pricing schedule in this market. In this regard, it is a market that is heavily oriented to pleasure travel and it is one that has marked seasonal and directional peaks. The IATA transatlantic carriers must have a product that will be attractive to the optional pleasure traveler and, moreover, they must have a product that will be suitable for the different price levels of the pleasure travel market. Further, there must continually be new ideas and innovations to attract newcomers. All of this necessarily results in a somewhat more expansive rate schedule than usual.

It must also be recognized that if there were only one normal fare across the Atlantic, much less traffic would be obtained, load factors would be lower and the normal fare would have to be much higher.



Thus, the result of the variety of special fares is to help keep the normal fare down and to improve the quality and quantity of service available to the normal fare payer.

In the welter of arguments and counter-arguments that have arisen in this controversy, the great benefits of this agreement to the traveling public is a factor that must remain uppermost. Many of the complaints and objections, such as those of the supplemental carriers, in particular, make little or no mention at all of the interest of the traveling public and the effect of the agreement upon them. The proposed fare structure would bring lower fares to the public, bring needed new traffic to the scheduled transatlantic carriers at a critical time, and it would do this in a manner that would improve the financial position of the carriers. Nothing advanced in the complaints and objections can possibly outweigh these most important public interest objectives.

The only major opposition to the agreement is that of the supplemental carriers. As we understand it, the request for disapproval is bottomed primarily, if not solely, upon an alleged diversion of the supplemental carrier traffic. In our opinion, and as shown in our economic justification, there will be no diversion of traffic from the strong and prosperous transatlantic supplemental carriers to such an extent that could justify disapproval of

this agreement. As the issue has become drawn, the question really comes down to a balancing of the undeniable benefits to the public and the scheduled carriers that would flow from this agreement against a speculative alleged need by the supplemental carriers for protection of their private interests.

We submit that there can be no doubt as to where the public interest lies. Tracing back through history, the issue present here is virtually the exact same question that the Board decided in the 1962 case involving the introduction of the affinity group fares across the Atlantic by the IATA carriers. In that case the supplementals were fighting the group fares on the same considerations and in practically the same manner as in the instant proceeding. The Board resolved the prime question in that case as follows:

"Weighed against the positive benefits of group fares to the scheduled carriers and the public, we cannot conclude that the impact on the part 295 carriers is sufficient to warrant disapproval of the fares. The economic health of the U.S. certificated transatlantic carriers is a matter of prime concern to the Board in the public interest. These carriers are required by their certificates of public convenience and necessity to perform regularly scheduled transportation for the general public in good years as well as bad years, in the off season as well as the peak season, and over their thin 'national interest' routes as well as the lush North Atlantic. Their need for the assistance which the group fares will provide is established. On the other hand, the part 295 carriers have no obligation to serve the North Atlantic, and may and do move in and out of the market at

will. Their participation in the total market is extremely small. Moreover, it has not been shown that the impact on them will be critical. Under these circumstances we could not disapprove the proposal in order to protect the part 295 carriers from a potential loss of revenue." IATA Group Fares Agreement, 36 CAB 33, 40 (1962).

For similar reasons the Board should reach the same result here.

## II.

### THE ELIMINATION OF THE ROUND TRIP DISCOUNT ON NORMAL FARES IS FULLY JUSTIFIED

The small increase in normal fares that would occur by reason of the elimination of the round trip discount is largely offset by the liberalization of other fares and the downgrading of normal fare traffic to these lower fare levels. Moreover, the offset is in individual excursion and IT fares and not in the group fares as the supplementals contend. As shown in its economic justification, Pan American estimates that individual excursion and IT passengers will increase by 25% through diversion from normal fare traffic. Thus, the May 1, 1969 fare changes would increase Pan American's average economy class fare by only 1.4% or an increase in economy class revenues of \$1.7 million.

The increased revenues that would be derived from the elimination of the round trip discount would be fully justified even if there were no offset.\* As indicated in the economic justifica-

\* Not all passengers are round trip and for the one-way traffic there, of course, will be no increase.

tion, Pan American's rate of return on investment for its Atlantic sector in 1968 was 4.97%\*, and for the four-year period 1965 through 1968, 8.3%\*\*.. The additional revenue referred to above would in a full year have raised this return for 1968 only to 5.4%, which is substantially below the 10.5% found by the Board to be reasonable. Further, costs are continually rising on all fronts thereby putting additional pressure on the carriers' financial position. In the domestic area, the Board concluded that increased costs and expenses would deny the carriers a fair rate of return unless there were a moderate fare increase. Thus, the Board allowed a revenue increase of slightly less than 4% for the domestic trunkline industry (Order 69-2-98, February 19, 1969).

In connection with its contention that the liberalization of the excursion and individual IT fares should not be considered as an offset to the elimination of the round trip discount, NACA alleges that the changes to the excursion and IT fares were accomplished "for reasons of carrier self-interest". It has consistently been Pan American's view, including its position in recent IATA conferences, that the liberalization of the excursion and individual IT

\* Excluding investment tax credits, on investment excluding equipment purchase funds.

\*\* Excluding special item related to the sale of Panagra, the return is 7.9%.

fares would not generate traffic so as to offset the diversion that would occur from normal fare traffic. In fact, it is only with the elimination of the round trip discount that the reduction in normal fare revenue that will occur through diversion to the new excursion and IT fares is held down so as to avoid an overall net decrease in revenues (see Attachment A). NACA's estimate that Pan American would derive \$4.7 million in increased revenues through the elimination of the round trip discount is misleading and simply incorrect. It cannot be assumed, as NACA has done, that there will be no diversion of normal fare traffic to lower fare classes. For those passengers that are diverted, Pan American not only will fail to receive the revenue associated with the elimination of the round trip discount, but will also fail to receive the amount of revenue it has obtained from this traffic in the past. In order to counter any NACA contentions on this score, we have set forth in Attachment A, the net passenger and revenue increases and decreases that will occur for each fare basis.\*

\* NACA also contends that "lagging load factors" on weekends and other blackout periods were the reason for the liberalization of the excursion and individual IT fares, rather than any offset to the elimination of the round trip discount. Attachment B sets forth Pan American's load factors by day of the week. While Sunday is relatively soft in some cases, Friday and Saturday compare favorably with other days of the week. The important point is that this allegation by NACA does not in any way controvert Pan American's basic position that the increased revenues from elimination of the round trip discount will be largely offset by diversion of normal fare traffic to the individual excursion and IT fare levels.

It has been urged that the elimination of the round trip discount should be disapproved on the grounds that it will change the habits of the traveling public and rather than purchasing round trip tickets in the United States, one-way tickets will be utilized for each portion of the journey. No factual support has been advanced for such a contention. Pan American's experience in another major tourist market involving a substantial expenditure, i.e., Hawaii, has been that 80-90% of the passengers purchase round trip tickets notwithstanding that there is no round trip discount. Moreover, nothing has been shown in any of the filings that would support a contention that exchange rates in Europe would provide an incentive for the purchase of one-way tickets. Our review of the situation in various European countries at the present time does not indicate that any substantial advantage could be obtained. Further, it defies common sense that in a major travel investment, such as a transatlantic journey, a passenger would forego the convenience of purchasing a round trip ticket and incur the disadvantages of purchasing one-way tickets on the speculative possibility that some small monetary benefit might come his way through exchange of currency. In fact, the chances are just as good that a passenger would lose on such a tactic as they are that he would gain.\*

\* Insofar as effect on the balance of payments is raised as a consideration, if both one-way tickets are purchased for a U.S.-flag carrier, there is no difference than if a round trip ticket were used on this carrier.



## III.

THE BULK, AFFINITY AND INCENTIVE GROUP FARES  
ARE FULLY REASONABLE

The bulk, affinity and incentive group fares are promotional fares which are designed to fill seats which would otherwise go empty. One of the Board's most recent pronouncements concerning the reasonableness of fares in these circumstances was in its consideration of the family fare tariffs:

"The standard of reasonableness used by the Board to measure discounted or promotional fares designed to utilize seats that otherwise would be wasted is the effect on profits test. Under this standard, a fare not reasonably related to the fully-allocated cost of the service may nonetheless be found reasonable if it improves the net profit position of the carrier. To satisfy the effect on profits test, a promotional fare must generate sufficient new traffic to offset the loss of revenue from self-diversion plus the added cost of carrying the additional traffic." Family Fare Tariffs, Order E-26431, February 29, 1968.

This, of course, is more commonly known as the "profit impact test" and the group fares in question here fully meet this standard of the Board.

As indicated in Pan American's economic justification, pp. 5-6, its overall revenues and traffic would increase with the new fares and there would be no appreciable increase in cost since all of this traffic could be accommodated on existing and planned services. Certainly for the length of time encompassed by this agreement, which includes the advent of the 747 aircraft, there is no doubt that the in-



creased group traffic that Pan American forecasts could be carried on its existing services.

Another indication of the reasonableness of the group fares is that they cover available seat mile costs by a wide margin. NACA has referred to an IATA available seat mile cost of 2.57¢. It should be understood that this includes a return element which if eliminated lowers the breakeven cost per seat mile to about 2.20¢. In contrast to these costs, Attachment C shows that the bulk fares (with an appropriate commission adjustment) are between 2.81¢ to 3.54¢ per mile, while the affinity and incentive group fares range between 2.90¢--4.34¢ per mile.\*

Faced with the fact that the group fares present a classic application of the "profit impact test", NACA has attempted to show that the additional traffic could not be carried on existing services. To do this it is forced to rely upon a single load factor in one direction (westbound) for one month (August). This certainly does not refute the showing in Pan American's economic justification that the estimated annual increase in traffic could be easily accommodated on existing and planned services, particularly with the 747 aircraft in the summer of 1970. The estimated annual load factor of 57.2% (Pan Ameri-

\* The 2.81¢ and 2.90¢ fares are available only in the depth of the winter between November and March.

can's economic justification, p. 6) after the increase in traffic (and before the 747) is fully reasonable and provides sufficient flexibility in the peak summer months. Moreover, it should be pointed out that in the case of the affinity group fares, the new proposal provides for an increase in the peak month of August. In sum, NACA has failed to show that the "profit impact test" is inapplicable here.\*

#### IV.

#### THE GROUP FARES UNDER REVIEW ARE NOT UNJUSTLY DISCRIMINATORY AND/OR UNDULY PREFERENTIAL

As to the affinity and incentive group fares, NACA claims that these fares are "unjustly discriminatory" because they are "not available to all but only to a limited segment of the public". As to the affinity group fares, the contention now advanced was rejected in 1962 (36 CAB at 41) because of, among other things, "heavy public interest considerations favoring the group fare". The affinity fares have been approved by the Board many times since 1962 without any objection raised by the supplemental carriers (see, for example, Order E-24823, March 6, 1967).

There is even less basis for the charge of "unjust discrimination" now with regard to the affinity

\* The NACA contention that additional capacity will be needed in the summer months to carry the new traffic is somewhat inconsistent with its claim that the excursion and IT fares were extended into peak blackout periods to correct "lagging load factors".

group fares than there was in 1962, since the new bulk IT fares will provide fares at or near the same level to individual members of the public. The same rationale applies as to the incentive group fares. Admittedly, these have been designed for special corporate groups that do not fit precisely within the historic affinity group fare definition. However, this does not mean that such fares are unjustly discriminatory against other groups or individual members of the public since there will be other fares available at approximately the same level for such persons.\*

The supplementals also claim that the fares are unjustly discriminatory by reason of the discounts involved. This again is similar to an argument made in 1962 at which time the Board, in considering the affinity group fares, stated that the determination of the question of the reasonableness of the discount "involves a large degree of judgment" (36 CAB at 41). The fare structure has become even more complicated since that time and we submit that this again is a question which involves largely a matter of judgment.

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\* NACA has also claimed that the fares involving ground accommodations are unjustly discriminatory (NACA Complaint, p. 29). As NACA itself recognizes, the Board has dealt with this consideration in prior cases and has rejected such a contention on the grounds that the inclusive tour fares are available to all members of the public and therefore they cannot be found to be unjustly discriminatory (Order E-24823, March 6, 1967, p. 5).

In Attachment C we have set forth the various fares, the amount of traffic estimated to move at each fare and also the rates per mile on a maximum and minimum basis. An important point shown in Attachment C is that while slightly under 50% of the traffic would be estimated to move at normal individual fares, almost an additional one-third of the total traffic is estimated to move at individual excursion and IT fares. Thus, in measuring the relationship between individual fares and group fares, it is not proper, as NACA attempts to do, to relate the lowest group fare against the highest individual fare. The individual fare traffic moves at rates over a wide range that centers somewhere between four and seven cents per mile, as indicated in Attachment C. On the other hand, the group fare traffic (with an appropriate adjustment for commission on the bulk fare) centers at a point somewhere between three and four cents per mile.

All in all, the relationship between the fares available for individual travel and those available under group travel is not out of line.\* Moreover, there is no doubt that the bulk and affinity group fares are well above both planeload charter and avail-

\* In 1962 the Board was dealing with a 38% discount for group travel (36 CAB at 41).

able seat mile costs (Cf. 36 CAB at 41). Thus, the rates for group travel cited above can be contrasted with the TIA figures that NACA itself has provided for DC-8 aircraft ranging between 2.07¢--2.30¢ per mile during the peak summer season.\* Indeed, these figures show a substantial difference between the group fares and the planeload charter rates of the supplementals.

Further, the differences in restrictions, availability, etc. (see Pan American's economic justification, Attachment A), also support the validity of the relationships among the various fares. In short, the fares are reasonable in relation to the value of the service (Cf. 36 CAB at 42). Lastly, and very important in connection with the NACA solicitude for the normal fare passenger, in view of the substantial financial contributions that the group fares will make and the fact that they will improve the financial position of the scheduled carriers, it is clear that they will not burden the individually ticketed passenger (Cf. 36 CAB at 41-42). As the Board has found in considering transatlantic group promotional fares ". . . additional volumes of traffic will afford a broader base over which to spread costs and should enhance the possibility of lower

\* NACA also supplied somewhat higher rates for the B-727 but this is not a representative aircraft or one that is used widely in transatlantic service.

normal fares." (Order E-24823, p. 5).

The supplemental carriers have also complained against the California proportional fare to be utilized in connection with the New York-Europe fares. This proportional has been adopted because of a special situation involving California-Europe travel and is fully reasonable and justified under such circumstances. Moreover, this type of proportional has been adopted and approved by the Board with respect to Seattle/Portland where it was necessary because of competitive Vancouver-Europe considerations.

The rate per mile involved in the California proportional is not out of line with the rate per mile in the New York-Europe basic fare. For example, the affinity group shoulder New York-London fare of 3.06¢ becomes 3.13¢ for Los Angeles-London when the proportional is applied. Similarly, the affinity group off season New York-London fare of 2.89¢ becomes 3.02¢ between Los Angeles and London with the proportional. Certainly, the proportional fare is reasonable from this standpoint. The proportional is also necessary in order to bring about a better relationship between West Coast-Europe IATA charter and scheduled traffic. On the West Coast during the March-September 1968 period, IATA charter traffic was 14.22% of the total IATA traffic, while on the East Coast for this same period the percentage was only 7.84%. This reflects the differences that exist between affinity charter and affinity scheduled fares on the two coasts. On the East Coast a June/July Pan American charter New



York-London round trip would be \$207 per seat contrasted with an affinity group scheduled fare of \$250. Without the proportional, the relationship for similar service Los Angeles-London would be \$327 for the charter and \$540 on scheduled services. The proportional will allow this West Coast relationship to be \$327 as contrasted with \$380, thereby bringing it more in line with the East Coast situation.

Further, as the Board well knows, California has become a hotbed for transatlantic charter activity, much of it on a possibly illegal basis.\* Indeed, there are indications that in the summer months up to 50% of the West Coast traffic moves on charter flights. The proportional in question has been designed so as to provide a service that would be attractive to traffic now moving on both IATA and non-IATA charter services. In these special circumstances and with the importance of the California-Europe market, there is no basis for any finding of undue preference or prejudice.

#### V.

#### THE CONTENTIONS OF THE SUPPLEMENTAL CARRIERS REGARDING DIVERSION SHOULD BE REJECTED

The heart of the position of the supplemental carriers is an allegation that unless the

\* In fact, in light of this questionable activity and some of the carriers involved, the Board may find quite hollow the lecturing by the supplemental carriers on the niceties and technicalities of the law on preference and prejudice.



Board acts, the IATA bulk and group fares will succeed "in their intended goal of diverting to the IATA carriers a large portion of the supplementals' transatlantic charter traffic" (NACA Complaint, p. 19). To support this, the supplemental carriers have sought to conjure some sort of unholy conspiracy among the IATA carriers.

This, of course, is a familiar refrain to the Board, since a similar effort was made in 1962 with regard to the introduction of the affinity group fares at that time. As to the instant case, we are not going to discuss in detail all the bits and pieces of quotes that NACA has sought to weave into a nefarious scheme on the part of the IATA carriers. Thus, the allegations of the supplementals should be given no more credence this time than they were in 1962. At that time the Board found that the claims of the supplemental carriers demonstrated at most, that "a legitimate desire to attract traffic moving on competitive non-IATA carriers was a consideration in favor of the group fares" (36 CAB at 38-39). We certainly do not deny that such a factor was a consideration with regard to the instant fares. However, an equally important consideration was to attract traffic now moving on IATA charters, as we have explained in our economic justification and certainly the supplemental carriers have not disputed this.

The supplemental carriers were never intended to be immune from price competition. NACA says we intend to "divert"; we say we intend to "compete". Is there really a difference in substance? In granting the supplemental carriers inclusive tour authority across the Atlantic, the Board made clear that the scheduled carriers were to have flexibility to adjust their fares to meet competition.

"... the fare structure is a matter well within the control of the scheduled carriers. Obviously, among the means which the route carriers have to meet the additional competition offered by inclusive tours is their own ability to offer promotional fares which will appeal to persons who would not otherwise have the means to pay the higher economy fare and who would prefer to use the services of the scheduled carriers."  
Reopened Transatlantic Charter Investigation (All-Expense Tour Phase), Order E-24240, served September 30, 1966, p. 9.

Certainly there is nothing wrong with the intention of the agreement to attract traffic to the scheduled services of the IATA carriers. Indeed, this is a consideration of great importance with the advent of the 747. Furthermore, there is no support whatsoever for any claim by the supplemental carriers that the agreement constitutes a "unfair or destructive competitive practice". We have every right to compete for the traffic and the group fares in question are still well above the planeload charter rates that the supplemental carriers can offer to the public.

NACA's attempt (Complaint, pp. 17-18) to portray the new group fares as being almost the same as the planeload charter rates of the supplementals is simply incorrect. This can be demonstrated solely by reference to the TIA experience that NACA has submitted, which for the DC-8 in the peak summer period involves rates of 2.07¢--2.30¢ per seat. During this same important period of the year (during which most of the supplemental traffic is concentrated), the bulk fare (with adjustment for commission) and the affinity group fare will be 3.54¢--3.62¢ per mile, or more than 50% above the TIA rates that have been quoted.\*

NACA has taken umbrage at Pan American's "repeatedly" referring to a \$131-138 New York-London charter price for TIA which it says "in almost all cases is superseded by higher point-to-point rates, and is thus almost never used." In response to this, we have reviewed the TIA tariffs and we still believe our point is valid. Certainly the aircraft-mile rate cannot be completely discounted in the manner NACA urges. Moreover, in looking at the point-to-point rates of TIA, to which we were referred by NACA, we found some very interesting charges. For example, there was a Brussels-New York one-way charge for a 125 seat 727 of \$4,000.50, which reduces down to about \$32 per passenger or less than one cent per mile. Further, there was a New York-Frankfurt charge (for

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\* The references are to peak period fares. Shoulder fares will be available during some portion of the June-September period.

one-day only) of \$16.54<sup>2</sup> which on a 250 seat DC-8-61/63 produces a result of about \$67 per passenger or 1.7¢ per mile (Trans International Airline, Inc., Charter Tariff No. WW-1, 20th Revised page 20, issued January 23, 1969, effective February 22, 1969). These particular point-to-point rates, coupled with the low aircraft mile rates, illustrate the great competitive advantage of flexibility that the supplementals have in attracting transatlantic group traffic. They can adjust rates and move in and out of particular markets virtually at will--a competitive tool that is denied the IATA carriers on their scheduled services.

Apparently so obsessed with their witchhunt to uncover evil and wrongdoing, the supplemental carriers have not even bothered to make an estimate of how much of their transatlantic traffic would be diverted by the group fares. Moreover, any claims of diversion on the part of the supplementals should be carefully weighed against the fantastic traffic gains that they have racked up in transatlantic service in the past few years, as well as the highly prosperous condition of the supplemental carriers in general (CAB Press Release 69-21, February 14, 1969). If the Board would not disapprove the 1962 group fares agreement to protect the supplementals from "a potential loss of revenue", the substantial advances in traffic, revenues and profits by the supplementals since that time make it absolutely clear that the instant agreement should not be disapproved for such reasons.

## IX.

THE PROCEDURES PROVIDED BY THE BOARD FOR CONSIDERATION  
OF THE AGREEMENT HAVE BEEN FAIR AND ADEQUATE

As it has done in every stage of the consideration of this agreement, NACA complains again regarding the procedures adopted by the Board for review and decision on the agreement. In fact, by reason of the letter that NACA wrote to the Board in February, it appears that it had decided that the procedures would be inadequate in its view even before it knew what they were. In any event, the NACA contentions are without merit. This particular matter is again another question that was present in the 1962 case where similar contentions were advanced by the supplemental carriers as to the adequacy of the Board procedures. At that time the Board answered the supplemental carriers as follows:

"In addition, the question has been raised as to whether the matter should be set down for a full evidentiary hearing prior to further action by the Board on the resolution. Such a course of action would be tantamount to disapproval for the 1962 season, since a full evidentiary hearing could not be completed for several months. A hearing is, of course, not required under sec. 412, and we cannot find that a hearing is in any way a necessary predicate to an informed decision. We have provided the parties opportunity to submit direct and rebuttal evidence, as well as a written statement of their position, and have by subpoena afforded them a procedure to discover relevant documents, certain of which were submitted for our consideration. We have also granted the interested persons an opportunity to orally argue their positions

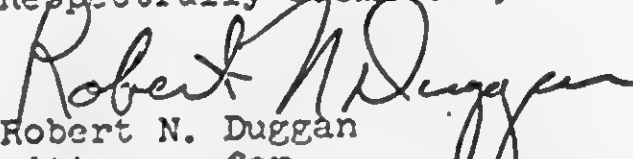
before the Board. While this procedure has not produced as complete and detailed a record as would be the case in a full hearing, it has developed a substantial body of evidence on the issues which we believe is entirely adequate. The evidence offered on the principal issues is in all major respects uncontroverted by the parties, subject to disagreement as to its interpretation. Moreover, to a large extent the factual issues can be resolved only by the passage of time as forecasts become history. Under all the circumstances, we conclude that a full evidentiary hearing would be inappropriate and inconsistent with our duties under the Act." (36 CAB at 35).

Subsequent events have fully justified the Board's rejection of the supplemental carrier request at that time. This precedent plus the circumstances of the existing situation provide a valid basis for the procedures which the Board has adopted here. Therefore, the Board should reject the requests of the supplemental carriers.

#### CONCLUSION

In consideration of the above premises, Pan American respectfully requests that the Board approve the IATA agreements under review.

Respectfully submitted,

  
Robert N. Duggan  
Attorney for  
PAN AMERICAN WORLD AIRWAYS, INC.

Dated: April 11, 1969  
New York, New York

**Estimated Annual Change in Pan Am's Commercial  
Economy Class Revenues as a Result of Fare Proposals  
Made at Dallas Based on its 1968 Traffic (As Normalized)**

	Additional Annual Traffic and Revenue (\$000)					
	Effective 5/1/69			Effective 11/1/69		
	Passengers	Revenue	Total	Passengers	Revenue	Existing
Normal	-59,853	\$-8,396	-59,853	-59,853	\$-8,396	-59,853
Family plan	-	-	-	-	-	-
Excursion:	-	-	-	-	-	-
Basic - Midweek	-	-	-6,981	-6,981	-918	-
Weekend	34,907	5,899	33,860	33,860	5,722	-
Peak - Midweek	11,635	1,920	11,286	11,286	1,862	-
Weekend	11,635	2,053	11,286	11,286	2,178	-
Total Excursion	58,177	9,872	49,451	49,451	8,844	8,844
Individual I. T.:	-	-	-	-	-	-
Basic - Midweek	1,006	153	1,006	1,006	153	-
Weekend	335	49	335	335	49	-
Peak - Midweek	335	59	335	335	59	-
Weekend	1,676	261	1,676	1,676	261	261
Total Individual I. T.	-	-	-16,437	-16,437	-1,736	-
Group I. T.	-	-	-2,969	-2,969	-382	-
Basic	-	-	-19,406	-19,406	-2,118	-2,118
Peak	-	-	-	-	-	-
Total Group I. T.	-	-	-	-	-	-
Affinity Groups	-	-	-	-	-	-
Groups of 25 & 15	-	-	-	-	-	-
Groups of 40/50	-	-	-	-	-	-
Peak	-	-	-	-	-	-
Shoulder	-	-	-	-	-	-
Off-season	-	-	-	-	-	-
Total Affinity Groups	-	-	12,953	12,953	1,137	-
Bulk I. T.	-	-	4,560	4,560	433	-
Peak	-	-	17,513	17,513	\$1,570	-
Shoulder	-	-	-	-	-	-
Off-season	-	-	-	-	-	-
Total	-	-	11,349	11,349	1,180	-
Military	-	-	53,908	53,908	4,852	-
Total	-	-	5,675	5,675	471	-
Off-season	-	-	70,932	70,932	6,503	-
Total	-	-	-	-	-	-
Grand Total	0	\$1,737	60,313	60,313	\$6,664	\$1,170

Attachment  
Page 1 of 2 Pages  
(See Page 2 of Attachment for Notes)



## Notes:

1. This attachment reflects a refinement of material already submitted and made available by Pan American (see economic justification, Attachments B and C, and NACA Attachment "E", Exhibit 26).
2. The May 1, 1969 changes illustrate the effect of no change in overall total traffic but a readjustment of traffic between classes. On a net basis this involves a decrease in normal fare traffic and an increase in excursion and individual IT traffic during the periods noted. The revenue changes associated with these traffic changes are shown for each fare base. The overall revenue change is an increase of \$1,737,000.
3. The November 1, 1969 changes illustrate an increase of 60,313 passengers in the overall total traffic. It also shows the net traffic change that will occur in each fare base by reason of the readjustment of existing traffic and the attraction of completely new traffic. The columns "New" and "Existing" show the changes by fare bases for each of these categories of traffic. Thus, as shown in these columns, there is no overall change in "Existing" traffic and an overall increase of 60,313 in "New" traffic. The corresponding revenue changes for each of these traffic changes are also shown. The overall net revenue increase for total traffic is \$6,664,000, consisting of \$5,494,000 from "New" traffic and \$1,170,000 from "Existing" traffic.

# COMPARATIVE PAA TRANSATLANTIC SEAT FACTORS

January - August 1968  
(Both Classes Combined)

## EASTBOUND

	January %	February %	March %	April %	May %	June %	July %	August %
Monday	44	39	40	59	60	73	82	55
Tuesday	42	36	33	44	51	66	75	46
Wednesday	43	41	40	48	51	69	75	41
Thursday	42	42	47	65	59	78	77	60
Friday	45	37	47	47	52	70	62	54
Saturday	45	41	46	48	65	70	57	54
Sunday	37	31	35	36	41	56	48	49
Mon/Thurs.	43	39	40	53	55	71	77	51
Fri/Sun.	42	36	42	44	52	65	56	53

Attachment B  
Page 1 of 4 Pages

Note: The French internal crisis in May 1968 and the BOAC pilot strike, effective June 15, 1968, affected seat factors at that time.

COMPARATIVE PAA TRANSATLANTIC SEAT FACTORS  
January - August 1968  
 (Both Classes Combined)

WESTBOUND

	<u>January</u> %	<u>February</u> %	<u>March</u> %	<u>April</u> %	<u>May</u> %	<u>June</u> %	<u>July</u> %	<u>August</u> %
Monday	45	39	41	58	62	68	71	86
Tuesday	41	36	37	48	44	51	64	81
Wednesday	44	40	39	48	49	56	58	81
Thursday	51	45	48	61	60	67	48	87
Friday	32	34	41	44	44	54	50	66
Saturday	42	45	47	56	57	67	66	72
Sunday	37	37	40	47	52	56	67	69
Mon/Thurs.	45	41	41	54	54	61	60	84
Fri/Sun.	37	39	43	49	50	59	61	69

Note: The French internal crisis in May 1968 and the BOAC pilot strike, effective June 15, 1968, affected seat factors at that time.

# COMPARATIVE PAA TRANSATLANTIC SEAT FACTORS

January-December 1967

(Both Classes Combined)

## EASTBOUND

	<u>Jan.</u> %	<u>Feb.</u> %	<u>March</u> %	<u>April</u> %	<u>May</u> %	<u>June</u> %	<u>July</u> %	<u>August</u> %	<u>Sept.</u> %	<u>Oct.</u> %	<u>Nov.</u> %	<u>December</u> %
Monday	49	35	47	71	74	69	81	55	65	50	30	43
Tuesday	48	41	42	52	52	69	71	54	47	36	31	42
Wednesday	46	41	44	60	60	69	73	54	44	35	37	43
Thursday	55	44	63	80	83	80	76	61	70	44	32	57
Friday	51	43	44	57	64	69	57	56	56	33	34	44
Saturday	54	41	35	65	63	61	58	58	56	44	35	36
Sunday	42	34	33	51	53	59	54	45	45	34	27	26
Mon/Thurs.	49	40	49	65	66	72	76	56	56	42	33	46
Fri/Sun.	49	39	38	57	60	64	56	53	53	36	32	36

Attachment B  
Page 3 of 4 Pages

Note: Seat factors may have been affected by the Middle East crisis in June 1967.

# COMPARATIVE PAA TRANSATLANTIC SEAT FACTORS

January-December 1967  
(Both Classes Combined)

## WESTBOUND

	Jan. %	Feb. %	March %	April %	May %	June %	July %	August %	Sept. %	October %	Nov. %	December %
Monday	50	40	44	63	72	75	63	86	80	71	44	48
Tuesday	50	47	49	55	58	61	48	84	68	56	42	47
Wednesday	44	49	53	53	56	63	50	84	59	53	46	52
Thursday	47	42	52	63	67	83	59	85	67	69	51	58
Friday	34	41	51	52	47	63	57	79	60	49	44	53
Saturday	43	52	55	64	55	66	70	69	66	59	53	55
Sunday	45	44	46	63	53	61	68	73	62	59	54	44
Mon/Thurs.	48	45	50	59	63	71	55	85	68	62	46	52
Fri/Sun.	51	46	51	60	52	63	65	74	63	56	50	51

Note: Seat factors may have been affected by the Middle East crisis in June 1967.

Estimated Annual Pan Am Transatlantic Commercial  
Economy Class Passengers and Fares per Mile Under  
Fare Proposals to be Effective November 1, 1969

	Pan Am Transatlantic Passengers <sup>1/</sup> Number	% of Total	New York-London		
			Round Trip Fare		Fare per Mile
			Minimum	Maximum	
Normal	456,884	49.9%	\$420	\$510	6.08¢ 7.38¢
Family plan	16,064	1.8	210	255	3.04 3.69
Excursion	282,157	30.8	300	410	4.34 5.94
Individual I. T.	8,381	.9	270	380	3.91 5.50
Group I. T.	19,407	2.1	230	280	3.33 4.05
Affinity groups	49,749	5.4 (15/25 (40/50	267 200	300 250	3.87 4.34 2.90 3.62
Bulk I. T. <sup>2/</sup>	70,932	7.7	175	220	2.53 3.19
Military	<u>12,758</u>	<u>1.4</u>			
Total Commercial Economy	<u>916,332</u>	<u>100.0</u>			

<sup>1/</sup> Year 1968 pro-forma.

<sup>2/</sup> Non-commissionable fares. With an appropriate adjustment for a commission rate of 10% normally paid in connection with tour sales, the bulk I. T. fares would range from 2.81¢ - 3.54¢ per mile.

UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board  
at its office in Washington, D. C.  
on the 30th day of April, 1969

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Agreements adopted by Joint	:	Docket 20781
Conferences 1-2 and 1-2-3 of the	:	Agreement C.A.B. 20848
International Air Transport	:	R-1 through R-8
Association (IATA) relating to	:	R-10 through R-12
transatlantic fares	:	R-14 through R-68
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ORDER

There have been filed with the Board, pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, agreements among various air carriers, foreign air carriers, and other carriers, embodied in the resolutions of Joint Conferences 1-2 and 1-2-3 of the International Air Transport Association (IATA), adopted at meetings held in Dallas, Texas, in January 1969.

The agreements embrace fare resolutions to apply via North and Mid Atlantic routes from May 1, 1969, through March 31, 1971.<sup>1/</sup> By Order 69-3-1, dated March 3, 1969, the Board established procedural dates for the receipt of documentation, complaints, and answers, relating to these agreements.<sup>2/</sup> Thereafter, numerous complaints, objections, and comments were filed opposing approval of the agreement in whole or in part and, in some cases, requesting an evidentiary hearing upon the issues presented. In view of the importance of the issues raised by these filings, the Board held oral argument on April 16, 1969.<sup>3/</sup>

- 1/ The agreements also include related fare resolutions applicable to travel via the North Atlantic to/from the Orient.
- 2/ Documentation and economic data to be received March 13, 1969, complaints and objections by March 27, 1969, and answers to complaints by April 7, 1969. The dates were thereafter extended to April 4 for filing complaints and to April 11, 1969 for filing answers.
- 3/ Order 69-4-30, dated April 4, 1969. Appearances were made by:
  - Robert M. Lichtman and Clayton L. Burwell for National Air Carrier Association (NACA)
  - Paul A. Quinn for American Society of Travel Agents, Inc. (ASTA), and Association of Bank Travel Bureaus (ABTB)
  - J. W. Rosenthal and Neil Shilling for Hertz International Ltd.
  - Anthony F. LoFrisco for Panmarc, Inc., Peerless Travel Agency, Inc., Downtown Travel Center, Inc., and Astral Travel Agency, Inc.
  - Herbert Smolen and W. F. Hamill, Jr., for the City of Philadelphia and the Greater Philadelphia Chamber of Commerce
  - Robert N. Duggan for Pan American World Airways, Inc.
  - Ulrich V. Hoffman and Melvin L. Milligan for Trans World Airlines.



- 2 -

The most significant changes proposed for the transatlantic fare structure are the elimination of the round-trip discount, the extension of the availability of the 14-21-day excursion and individual inclusive tour (IT) fares, and the establishment of Contract Bulk Inclusive Tour Fares which would become effective November 1, 1969. These provisions, as well as other modifications, are described more specifically below.

#### Normal Fares

The agreement proposes generally to maintain current one-way fares, but round-trip fares would be increased by elimination of the five-percent round-trip discount. This elimination, for example, would raise the New York-London basic round-trip economy fare from \$399 to \$420 and the peak-fare from \$484.50 to \$510.

#### Special Fares

##### 14-21-Day excursion and individual inclusive tour (IT) fares:

These fares would be retained generally at the status quo. A significant innovation, however, provides for the extension of these fares to year-round application with added charges for travel during heretofore precluded peak summer weeks and on weekends. The proposed added charges are \$50 for travel during the summer weeks and \$30, each direction, during weekends.

##### Group inclusive tour (GIT) fares:

These fares for 15 or more passengers are to be retained but are amended for effect from April 1, 1970 to reflect modest increases, based on an \$8.00 increase New York-London. The minimum tour price, now set at \$70, would simultaneously be increased by \$7.00 for each day in excess of the minimum 14 days, and tour provisions would also be tightened. For example, stop-overs, heretofore unlimited, are to be restricted to five, including the turnaround point.

##### Affinity group fares:

Effective November 1, 1969, lower fares would be made available for larger-sized affinity groups. Currently, fares are offered to affinity groups of 50 or more at a level of \$245 (New York-London) during a seven-month period of April through October. This period would be restructured into peak and shoulder seasons. During a ten-week peak season eastbound and three months westbound, fares for groups of 50 or more would be increased \$5.00 (New York-London). However, the minimum-size requirement would be lowered

to 40 passengers in the shoulder period which encompasses the remaining portion of the present seven month summer season and significant reductions from the existing affinity fare would be introduced; e.g., between New York and London the fares would be lowered from \$245 to \$212. New fares for groups of 40 or more passengers would also be offered in the five-month winter season at a level of \$200. Stopovers would no longer be permitted at these group fares

Incentive group fares:

The same fare levels agreed upon for affinity groups of 40 or more in the shoulder and off-season periods (i.e., the New York-London \$212 and \$200 fares) are proposed to be made available to profit making organizations under the terms of a new promotional fare resolution for "incentive group" travel during the year, except during peak travel months. To be eligible for this fare, the incentive group must consist of 40 or more passengers in the case of east-bound originations (20 or more in the case of west-bound originations) who are employees, dealers, and/or agents of the same business corporation or firm, and who are traveling under an established incentive travel program. The cost must be borne entirely by the sponsoring business and must include, in addition to air transportation, tour features such as accommodations, sightseeing, and entertainment during a 6-14-day validity period.

Contract bulk inclusive tour fares:

A new resolution, intended for effectiveness November 1, 1969, contemplates the sale of blocks of seats (at least 40 eastbound and 20 westbound) to tour operators, or other contractors, at a bulk fare price for use in connection with 14-21-day tours. In general, the level of fares between U. S. points and closer European points such as London, Amsterdam, Paris, and Madrid would be established with peak, shoulder, and off-season period differentials. For example, base round-trip fares for travel between New York and London would be established at \$220 in the peak season, at \$190 in the shoulder season, and at \$175 in the off-season. Three stopovers would be permitted. Beyond those European points named above, higher stopover charges in shoulder and off-season periods would eliminate the shoulder and off-season fare differential for stopover passengers. Other principal provisions are (1) a minimum-tour price per person for ground accommodations, etc., of \$100 for the 14-day minimum-stay period plus \$7.00 per day thereafter, (2) advance 10-percent non-refundable deposits three months before departure, and (3) full payment one month before departure. Sales by carriers to contractors are to be non-commissionable

Other fare provisions. The westbound family fare program would be continued. Provisions for the new B-747 aircraft have been added which stipulate a 6-abreast, 42-inch seat pitch configuration in first-class service and 9-abreast, 34-inch seat pitch configuration in economy service. Additionally, stateroom accommodations for up to 8 persons in a master stateroom and up to 4 persons in a compartment would be made available in first-class service. The charges for these accommodations would be as follows:

<u>Type of Stateroom</u>	<u>Occupancy</u>	<u>Number of First-Class Fares Charged</u>
Master	6 or less	8
	7	9
	8	10
Compartment	3 or less	4
	4	5

No charge would be added for the conversion of these facilities into sleeping accommodations.

Upon consideration of the record herein and all relevant matters, the Board has concluded to approve the agreements, subject to the provisions and conditions set forth below, and to institute an investigation, to be conducted upon an expedited basis, of the contract bulk inclusive tour fares and the elimination of the round-trip discounts.

The Board's approval of these matters herein being set for investigation will be limited to the period through March 31, 1970. The balance of the agreements will be approved through the intended period of their effectiveness, March 31, 1971, except that action will be deferred on the increases in the group inclusive tour fares, proposed for April 1, 1970, effectiveness.

NACA, ASTA, ABTB, the National Industrial Traffic League (NIT League), and others oppose the elimination of the round-trip discount. It is alleged, inter alia, that the increase is unjustified and seems to subsidize low group fares directed at the supplemental carriers, at the expense of the business traveler. NACA further asserts that the fare increase stemming from elimination of the round-trip discount is not offset by the extension of the 14-21-day individual excursion fares and the individual IT fares, within the meaning of a prior Board statement that any change in the round-trip discount should be accompanied by offsetting fare adjustments (not including the bulk fare plan). These contentions, together with data included in the most recent IATA cost committee report, and the 1968 rate of return experienced by TWA for transatlantic operations (14.5 percent excluding investment tax credits) point to the need of an expedited investigation as to the elimination of the round-trip discount, and the limitation of our approval of this element of the subject agreements to March 31, 1970.

On the other hand, the Board notes that elimination of the blackout heretofore applicable to weekends and summer peak periods in connection with the 14-21 day excursion fares and the individual inclusive tour fares will bring the advantage of these promotional fares, which will be at much lower levels than would otherwise be applicable for travel during these periods at the normal economy fares, to a significant number of additional passengers. Estimates by TWA, based on the fare differential between the normal and the promotional fares and the number of passengers it expects will utilize these lower fares during the periods they were previously unavailable, indicate potential fare savings of a magnitude comparable to the fare increase which will be effected by discontinuance of the round-trip discount. Estimates submitted by Pan American tend to corroborate this offset. Moreover the Board notes that the rate of return for Pan American has trended downward since 1966, reaching 5.0 percent in 1968 (excluding investment tax credits), and that the cost data contained in the most recent IATA Cost Committee Report (May 1968) may not realistically reflect present circumstances in view of the general inflationary trend in the economy and the somewhat lower load factors achieved by the carriers last year. In these circumstances, the Board is not prepared to disapprove the elimination of the round-trip discount pendente lite.

The contract bulk fares envisage an entirely new concept of marketing. The fares proposed are lower than any fares ever offered in scheduled service on the Atlantic. Lower tour prices made possible by the lower air fares should serve to enable many persons to travel by air who would not otherwise be able to use air transportation, and we believe that approval is warranted in the public interest during the limited period through March 31, 1970. This limited approval will permit some experience to be gained with respect to both the generative aspects of the fares and their impact upon the supplemental carriers.

The Board, however, notes the contention of the supplemental carriers that these fares are uneconomic, and have been designed to capture supplemental carrier charter traffic. These allegations can best be fully explored through a formal hearing. The Board believes that sufficient question has been raised to require that they be included in the investigation. The investigation of the contract bulk inclusive tour fares will include within its scope the issue of unjust discrimination and undue preference and prejudice stemming from the relationship of the proportional fares (add-on to the New York fares) applicable to specified California points as compared with the add-ons to other United States points.

NACA takes the position that the bulk fare resolution would make the tour operator an unauthorized indirect air carrier, that the operations would thus be in violation of section 401, and, accordingly, that the resolution is adverse to the public interest. It points out that, in exempting tour

operators in connection with inclusive tour charters under Part 378 of its regulations, the Board acted on the basis of a record and adopted detailed provisions designed to protect the public, and that the absence of restrictions upon bulk fare tour operators would put the supplemental carriers at a competitive disadvantage. NACA also argues that there has been no appropriate request for authority no demonstrated public need for indirect air carrier authorization, and no record upon which to base the grant of an exemption or formulate appropriate regulations.

TWA denies that the tour operator would be an indirect air carrier, stating that the operator will represent the air carrier and that, although the operator may undertake some responsibilities with respect to the sale of bulk fare transportation which he does not undertake with respect to the sale of transportation under other fares, he will not be engaged in such a holding out to the public as to qualify his activity as an indirect air carrier independent from the carrier principal. However, TWA states that it assumes that, in any event, the Board will give "appropriate approval" to the program when it finds it to be in the public interest. Pan American also assumes that the Board will provide such authority and conditions with respect to the tour operator as it deems necessary to implement the proposal and protect the public.

We agree with NACA that activities pursuant to the resolution would place the tour operator in the position of an indirect air carrier not presently authorized by the Board. As previously set forth, under the resolution the function of the tour operator or "contractor" is to produce and promote inclusive tours. He contracts with the direct carrier, is charged for all seats contracted for, whether they are used or not, and he receives no commissions from the direct carrier. His profit will consist of the difference between the tour price he establishes and his costs for air fare, ground arrangements, etc. With respect to the air transport component of the tour operator's costs, he must charge a sufficient price per seat to cover not only the seat price paid the direct carrier, but also the number of seats which he anticipates he may be unable to sell, and his selling and other costs. It is thus apparent that the tour operator must necessarily include in the tour price a component for the air transportation portion which is in excess of the air carrier's bulk fare tariff. Profits will accrue to the tour operator if he sells sufficient seats to exceed his breakeven load factor for the block of seats, and he runs the risk of loss if he cannot meet his breakeven load factor. In these circumstances, the tour operator is clearly acting, not as an agent on behalf of the direct carrier, but as a principal for his own account buying air transportation in bulk at wholesale prices and providing for its sale as part of a tour at retail prices. While there may be some differences in the mechanics of the operation, the operator is akin to a consolidator and forwarder of passengers. We conclude that, as such, he would be engaging indirectly in air transportation within the meaning of section 101 of the Act.



It is also true that there is presently no authority for tour operators providing bulk inclusive tours. However, for the same reasons as underlie our interim approval of the bulk fare agreement itself, we find that it is in the public interest to provide such authority to the tour operators as will be necessary to implement that agreement. To this end we will institute a rule making proceeding in the near future with a view toward exempting bulk fare inclusive tour operators subject to appropriate conditions for the protection of the public.

Proposed conditions on approval.

As previously indicated, the resolution provides that sales by the IATA members of bulk tickets to tour operators shall not be subject to commissions. Four travel agencies urge that we condition our approval so as to require that sales of the bulk fares to the tour operators themselves be commissionable.<sup>4/</sup> In our view, such a condition would not be consistent with the status of the tour operator as an indirect carrier. We have repeatedly held that air freight forwarders are not entitled to commissions from the carrier on consolidated shipments.<sup>5/</sup> In such circumstances, the forwarder receives its profits from the difference between the charge paid to the direct carrier, based on the latter's tariff rate, and the higher unit rate which he assesses individual shippers. Similarly in the case of inclusive tour charters under Part 378, the carrier is required to collect the full tariff price from the tour operator who, in turn, is free to charge a sufficient price to individual tour participants to cover his total cost. In light of the foregoing, we see no occasion to require the payment of commissions in the case of bulk fares.

The resolution also provides that no refunds may be granted by the direct carrier to the tour operator, and any refund to the carrier shall be the sole responsibility of the contractor. ASTA takes the position that these provisions are unduly punitive, and that they should be changed to provide for refunds to the tour operator in the event that persons purchasing the space from the contractor are unable to travel because of death or serious illness of the passenger or members of his family. Again we conclude that such a provision would be inconsistent not only with the status of the tour operator as an indirect carrier, but also with the basic concept of the bulk fares. As stated, these fares are established at a low level in recognition of the fact that the tour operator assumes the risk of filling the seats that he purchases. The tour operator is expected to charge a sufficient price to each passenger to compensate him for the risk of empty seats. Under these circumstances, we conclude that the matter of refunds should be the responsibility of the tour operator and not the direct air carrier.

<sup>4/</sup> ASTA, representing the bulk of the travel agents, does not take this position.

<sup>5/</sup> See, Investigation of Seaboard & Western Airlines, Inc., 11 CAB 372 385 (1950); International Air Freight Forwarder Investigation, 27 CAB 658, 665 (1958).

Neither will we limit the sale of bulk fares by the direct carriers to sales to IATA-approved agents, as suggested by ASTA, CTOA, and other parties. These parties contend that the restriction is needed to protect the public against unqualified tour operators. However, the carriers themselves have not seen fit so to restrict these fares, and it appears that there are a number of reputable tour operators who are not IATA sales agents. We are not persuaded that the public interest requires that tour operators be restricted to IATA-approved agents. We will reserve to the rule making proceeding the question of appropriate conditions to protect the public in these respects.

It is also urged that we require that the advertising of tour prices involving bulk fares be limited to the total tour price without a breakdown into the air transportation and other components. However, under the provisions of section 411 of the Act, tour operators will be required to refrain from deceptive advertising, and we are not prepared at this time to impose any more detailed restrictions on their advertising practices. Conditions have also been proposed with respect to car rentals. Under the bulk inclusive tour resolution, the minimum selling price of the tour for sleeping accommodations, sightseeing, and entertainment features must be at least \$100 over the unit contract bulk price for the air transportation, plus \$7 a day for each day in excess of the minimum stay period. It thus appears that car rentals may not be included in the computation of the minimum selling price of the tour, unless they fall within the sightseeing category. Hertz International, Ltd. requests that we condition our approval of the fare agreements on inclusion of car rentals as a minimum tour feature, or in the alternative, that we specify that rental cars may be used within the sightseeing category if governed by an appropriate itinerary. In view of the desirability of providing low minimum prices for inclusive tour transportation and the need for distinguishing inclusive tours from regular point-to-point travel, the Board does not believe it is in the public interest to require that the cost of car rentals per se be included in the minimum tour prices. Moreover, it is noted that car rentals are treated no differently in this respect from other forms of ground transportation which are not included in the minimum tour package.

On the other hand, sightseeing features are includable in the minimum tour price, and both Pan American and TWA concede that, under certain circumstances, car rentals may fall within the sightseeing category. Hertz, however, would have us require that car rentals be accepted for that purpose if governed by an appropriate itinerary. In our judgment, such a provision must be rejected because it would not be sufficiently clear and definite to prevent the use of rental cars for purposes of mere point-to-point transportation.<sup>6/</sup>

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<sup>6/</sup> It may be noted, however, that the carriers agree that rental cars may be used to provide point-to-point transportation under the "travel together" provisions of the agreement.



The new incentive group fares are troublesome because of their discriminatory aspects. As noted, under the terms of the resolution, these fares are restricted to profit making organizations only for incentive group travel. The Board would have no difficulty if the resolution is broadened to correspond with group travel fare provisions applicable via the North/Central Pacific which provides that the travel group may be formed for "own use of one person", including an individual person or a legal entity. Our approval is conditioned accordingly.

The City of Philadelphia and The Greater Philadelphia Chamber of Commerce pleaded that the add-ons used in establishing fares to/from Philadelphia result in unduly high fares and that they discriminate against Philadelphia in favor of New York. Philadelphia is an international gateway point and has a significant volume of non-stop service to/from European points. Moreover, because of its proximity, it is in direct competition with New York for international travel. No sound reason has been advanced why the Philadelphia fares should be disparate with New York fares from the standpoint of mileage. Accordingly, the Board can not find in the public interest an agreement which would preclude a carrier from establishing fares to/from the Philadelphia gateway which are reasonably related, on a mileage basis, to New York. These considerations are equally applicable with respect to Washington and Baltimore fares. We are, therefore, conditioning our approval so as to require that fares between these points and European points or beyond shall be, on a per mile basis, no greater than the fare to New York City for respective fare categories.<sup>7/</sup>

There is also pending before the Board a petition by NACA for review of the Chief Examiner's ruling granting the motions of TWA and Pan American to quash or modify subpoenas directing those carriers to produce certain documents. In view of our institution of an investigation of the provisions of the agreement eliminating round-trip discounts and establishing contract bulk inclusive tour rules, the problem of the proper extent of discovery available at the more preliminary stages of this case has become moot. Accordingly, we shall dismiss NACA's petition without prejudice to any prehearing conference information requests NACA may deem necessary under this order of investigation.

Finally, there is another motion pending by NACA to include as part of the record certain documents submitted by Pan American in response to a subpoena. No objection to the motion having been received, it shall be granted.

<sup>7/</sup> Subsequent to the public announcement of the Board's actions herein, Pan American has requested the Board to defer the effectiveness of this condition until July 1, 1969 in order to provide time for the carriers to make the necessary restructuring of their fares and amendments to their tariffs. In view of the technical problems involved the Board will defer the application of this condition until June 1, 1969 with respect to normal fares, and until July 1, 1969 as to all other fares. As a matter of clarification, the Board will accept, as a basis for computing the fares per mile, the use of the latest IATA Mileage Manual which lists the shortest operated distances between points.

The Board has considered all of the allegations raised by the parties, including those not specifically adverted to herein, as well as all matters bearing upon the agreements, and concludes that they are consistent with the public interest and should be approved.

In consideration of the foregoing, the Board makes the following findings:

1. The Board does not find the following resolutions, incorporated in Agreement C.A.B. 20848, adverse to the public interest or in violation of the Act, provided that insofar as air transportation is concerned approval shall be subject to the conditions as hereinafter ordered:

Agreement A.B. 20848	IATA No.	Title
R-1	001b	North Atlantic - Special Effectiveness Resolution (Tie-in) (NEW)
R-2	001b	Mid-Atlantic - Special Effectiveness Resolution (Tie-in) (NEW)
R-3	001e	Mid-Atlantic Escape for Normal and Special Fares (NEW)
R-4	001h	2 Year Effectiveness Escape - Passenger (NEW)
R-5	001s	North Atlantic Prorate Escape (NEW)
R-6	001t	North Atlantic Escape for Boeing 747 (NEW)
R-7	001u	JT123 Transatlantic Escape for Normal and Special Fares (NEW)
R-8	002	Standard Revalidation - North and Mid Atlantic
R-10	014a	Construction Rule for Passenger Fares (Revalidating and Amending)
R-11	015	North Atlantic Proportional Fares - North American (Revalidating and Amending)
R-12	023a	Rounding-Off Passenger Fares (Amending)

Agreement C.A.B. 208-S	IATA No.	Title
R-14	050	First Class Conditions of Service (Revalidating and Amending)
R-15	054a	North Atlantic First Class Fares
R-16	054b	Mid-Atlantic First Class Fares
R-17	054x	Iceland - Greenland First Class Fares (Revalidating and Amending)
R-18	057a	North Atlantic First Class Fares JT123
R-19	060	Economy Class Conditions of Service (Revalidating and Amending)
R-20	064a	North Atlantic Economy Class Fares
R-21	064b	Mid-Atlantic Economy Class Fares
R-22	064x	Iceland - Greenland Economy Class Fares (Revalidating and Amending)
R-23	067a	Economy Class Fares - TC1-TC3 via the Atlantic
R-24	070d(080d)	North Atlantic 21-Day Excursion Fares
R-25	070e(080e)	North America - India/Pakistan/Afghanistan/ Ceylon/Nepal 28-Day Excursion Fares
R-26	070f(080f)	Mid-Atlantic 21-Day Excursion Fares
R-27	070t(080t)	North Atlantic Excursion Fares to Amman, Baghdad, Beirut, Cairo, Damascus, Jerusalem, Nicosia, Teheran (\$535)
R-28	070v(080v)	Mid-Atlantic Excursion Fares - Havana
R-29	070x(080x)	North Atlantic Excursion Fares to Amman, Baghdad, Beirut, Cairo, Damascus, Jerusalem, Nicosia, Teheran (\$565)

<u>Agreement</u> <u>C.A.B. 20848</u>	<u>IATA No.</u>	<u>Title</u>
R-30	070z(080z)	Iceland - Greenland Excursion Fares
R-31	075h(088d)	North Atlantic Winter Group Fares to Israel
R-32	075hh(088dd)	North Atlantic Winter Group Fares to Middle East
R-33	075i(088)	North Atlantic Group Fares to Israel
R-34	076e(088n) I	North Atlantic Affinity Group Fares
R-35	076e(088n) II	North Atlantic Affinity Group Fares (Eff. November 1, 1969)
R-36	076f(088p)	Mid-Atlantic Affinity Group Fares U. K.- Caribbean
R-37	076i(088t)	Affinity Group Fares JT123
R-38	076m(088i)	North Atlantic Bulk Affinity and Incentive Group Prices - Spain/Portugal
R-39	076n	Mid-Atlantic Affinity Group Bulk Travel Fares (NEW)
R-40	076o	Mid-Atlantic Affinity Group Fares- Guyana/Surinam/Trinidad-India/Pakistan/ Afghanistan/Ceylon/Nepal (NEW)
R-41	076p	North Atlantic Incentive Groups (NEW) (Eff. November 1, 1969)
R-42	079a	North Atlantic Contract Bulk Inclusive Tours Rules (NEW) (Attachments "A" and "B" effective November 1, 1969)
R-43	080k	TC2 to Havana Individual Inclusive Tour Fares (NEW)
R-44	083(084w)	Mid-Atlantic Individual Inclusive Tour Fares - U.K./Germany - Caribbean

<u>Agreement</u> <u>C.A.B. 108-5</u>	<u>DATA No.</u>	<u>Title</u>
R-45	083a(084y)	North Atlantic Individual Inclusive Tour Fares
R-46	083b(084y)	North Atlantic Individual Inclusive Tour Fares
R-47	084a(087) I	North Atlantic Group Inclusive Tour Fares
R-48	084c(087-II)	North Atlantic Winter Group Inclusive Tour Fares to Israel
R-50	084cc(087-III)	North Atlantic - Winter Group Inclusive Tour Fares to Middle East
R-51	084f	Mid-Atlantic Group Inclusive Tour Fares - (NEW)
R-52	091c	North Atlantic Family Fares
R-53	094(096)	North Atlantic Emigrant Fares to Canada
R-54	094a(096a)	Mid-Atlantic Emigrant Fares - Caribbean - U.K..
R-55	095	North Atlantic 45-day Excursion Fares for U. S. Military Personnel-Revalidating and Amending
R-56	095a(095)	North Atlantic 45-day Excursion Fares for U. S. Military Personnel-Revalidating and Amending
R-57	095b(095a)	North Atlantic 45-day Excursion Fares for Canadian Armed Forces
R-58	095c(089)	North Atlantic Group Fares for U. S. Military Personnel - Revalidating and Amending
R-59	095d(089c)	North Atlantic Group Fares for Canadian Armed Forces
R-60	095e(089a)	North Atlantic Group Fares for Dependents of U. S. Military Personnel

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## Agreement

C.A.B. 20848

ATA R.R.

R-61	109a	Fares for Round Trips (NEW)
R-62	151a	Fares for Circle Trips (Revalidating and Amending)
R-63	200	Free and Reduced Fare or Rate Transportation (Revalidating and Amending)
R-64	200g	Government Orders for Free and Reduced Rate Transportation (Revalidating and Amending)
R-65	250	Sleeper Surcharge (NEW)
R-66	310	Free Baggage Allowance (Revalidating and Amending)
R-67	311	Baggage Excess Weight Charges (Revalidating)
R-68	079c	Mid-Atlantic Contract Bulk Prices - San Juan - Lisbon/Madrid (NEW) (Attachment "A" effective November 1, 1969)

2. The Board finds that action on Agreement C.A.B. 20848, R-40 ("North Atlantic Group Inclusive Tour Fares," Effective April 1, 1970) should be deferred.

Accordingly, pursuant to the provisions of the Federal Aviation Act of 1958, and particularly sections 204, 404(b), 412, 414, and 1002(f) thereof,

## IT IS ORDERED THAT:

1. Agreement C.A.B. 20848 described in finding paragraph 1 is approved, provided that, insofar as the resolutions apply in air transportation as defined by the Act, this approval shall be subject to the following conditions:

(a) With respect to R-68 ("North Atlantic Bulk Affinity and Incentive Group Prices - Spain/Portugal"), insofar as it relates to incentive groups, and R-61 ("North Atlantic Incentive Groups"), the travel group shall be formed only for the own use of one person (which expression shall include an individual person or a legal entity such as an association, partnership, company, or corporation); provided that the Purchaser shall not, wholly or partially, directly or indirectly share the cost of the air transportation with other persons interested in obtaining such transportation including the passengers carried.



(b) Approval of R-11 ("North Atlantic Proportional Fares-North American") shall require that fares between Philadelphia/Baltimore/Washington and European points or beyond be, on a per mile basis, no greater than corresponding fares per mile to/from New York for all respective fare categories.<sup>8/</sup>

(c) Approval of Agreement C.A.B. 20848, R-42 ("North Atlantic Contract Bulk Inclusive Tour Rules"), and R-68 ("Mid-Atlantic Contract Bulk Prices - San Juan - Lisbon/Madrid") shall be limited to March 31, 1970; any fare changes established pursuant to the escape provisions of these resolutions shall be filed with and approved by the Board prior to being placed into effect.

(d) Approval of Agreement C.A.B. 20848, R-61, ("Fares for Round Trip") shall be limited to March 31, 1970.

2. Action on Agreement C.A.B. 20848, R-48 ("North Atlantic Group Inclusive Tour Fares," Version II, effective April 1, 1970,) is deferred.

3. The motion of the member carriers of the National Air Carrier Association to include as a part of the record herein specified documents submitted by Pan American is granted.

4. The petition of the member carriers of the National Air Carrier Association for review of ruling granting motions to quash is denied, without prejudice.

5. To the extent not granted, all other motions, petitions, complaints, objections and requests filed herein are denied.

6. An investigation is hereby instituted to determine whether the following described agreements are adverse to the public interest or in violation of the Federal Aviation Act of 1958, and whether the fares, rules, conditions and provisions which are, or will be established pursuant to such agreements are or will be unjustly discriminatory or unduly preferential, or unduly prejudicial, and if such fares, rules, conditions, or provisions are found to be unjustly discriminatory, unduly preferential, or unduly prejudicial, to determine how such fares, rules, conditions or provisions should be altered, or what order should be made to remove such discrimination, preference or prejudice:

Agreement C.A.B. 20848, R-61 ("Fares for Round Trip")  
 R-42 ("North Atlantic Contract Bulk Inclusive Tours Rules")  
 R-68 ("Mid-Atlantic Contract Bulk Prices-San Juan-Lisbon/Madrid")  
 R-10 ("Construction Rules for Passenger Fares") insofar as it applies to the construction of Contract Bulk Fares.

<sup>8/</sup> Application of this condition is deferred until June 1, 1969, with respect to normal fares and until July 1, 1969, with respect to all other fares.



7. Copies of this order shall be served upon the following which are hereby made parties to this proceeding:

Pan American World Airways, Inc.  
Trans World Airlines, Inc.  
American Flyers Airline Corp.  
Modern Air Transport, Inc.  
Overseas National Airways, Inc.  
Saturn Airways, Inc.  
Southern Air Transport, Inc.  
Standard Airways, Inc.  
Trans International Airlines, Inc.  
Universal Airlines, Inc.  
World Airways, Inc.  
American Society of Travel Agents  
Association of Bank Travel Bureaus, Inc.  
Creative Tour Operators Association  
Hertz International Ltd.  
Budget Rent-a-Car International, Inc.  
Panmarc, Inc.  
Peerless Travel Bureau, Inc.  
Downtown Travel Center, Inc.  
Astral Travel Agency, Inc.  
AAA World-wide Travel, Inc.  
City of Philadelphia  
Greater Philadelphia Chamber of Commerce  
Metropolitan Washington Board of Trade  
National Industrial Traffic League  
Philadelphia Convention and Tourist Bureau

This order will be published in the Federal Register.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON

Secretary

(SEAL)

VICE CHAIRMAN MURPHY AND MEMBER MINETTI FILED THE ATTACHED JOINT CONCURRING AND DISSENTING STATEMENT.

MURPHY, VICE CHAIRMAN, AND MINETTI, MEMBER, CONCURRING AND DISSENTING:

We would disapprove the agreements now. Briefly, there is no economic justification for a 5 percent increase in the basic first-class and economy round-trip fares. Raising normal fares, which apply to the majority of the transatlantic traffic, for the purpose of subsidizing expansion of promotional fares -- particularly the contract bulk inclusive tour fares -- does not constitute, in our view, sensible ratemaking policy. Some of the promotional fares are perfectly proper; others, however, are clearly subject to the inference that they have been designed solely for anti-competitive purposes and that they are rested upon the 5 percent increase.

/s/ ROBERT T. MURPHY

/s/ G. JOSEPH MINETTI

BEFORE THE  
271  
CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

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LATA TRANSATLANTIC FARE :  
AGREEMENTS :  
:

Docket 20781  
Agreement C.A.B. 20848

MOTION OF MEMBER CARRIERS OF THE NATIONAL  
AIR CARRIER ASSOCIATION TO STAY PORTIONS OF  
THE BOARD'S ORDER PENDING JUDICIAL REVIEW

The undersigned supplemental air carriers and their attorney-in-fact, the National Air Carrier Association (NACA), having filed in the United States Court of Appeals for the District of Columbia Circuit a petition for review of certain aspects of Order 69-4-138 (No. 23012, filed May 7, 1969), now respectfully move the Board for a stay, pending judicial review, of those portions of that Order which:

(a) approved, through March 31, 1970, the elimination of the round-trip discount on basic North Atlantic fares (Resolution 150a);

(b) approved, through March 31, 1970, the North Atlantic Contract Bulk Inclusive Tour Fares (Resolution 079a); and

(c) approved the North Atlantic Affinity Group Fares (Resolutions 076e(088n) I & II), North Atlantic Bulk Affinity and Incentive Group Prices - Spain/Portugal (Resolution 076m(088i)), North Atlantic Incentive Group Fares (Resolution 076p), North Atlantic Group Inclusive Tour Fares (Resolution 084a(087)I), and the proportional fares for California points (Resolution 015, Attachment D).

If the Board is unwilling to stay its approval of Resolution 150a, eliminating the round-trip discount, we request, in the alternative, that the IATA carriers be directed to place in escrow all revenues derived from elimination of the round-trip discount, until the Court of Appeals acts on the petition for review.

As grounds for this motion, NACA and its member carriers state as follows:

I.

THE NACA CARRIERS' APPEAL RAISES SUBSTANTIAL  
ISSUES OF LAW WHICH SHOULD BE DECIDED BY THE  
COURT BEFORE THE BOARD'S ORDER IS PERMITTED  
TO TAKE EFFECT

In the Court of Appeals, NACA and its member carriers will challenge both the procedures which the Board has followed in this case and the substantive terms of the Board's Order. It is not appropriate to argue these issues at length in this motion. Our position on these matters has already been made clear in the pleadings previously filed herein and in our oral presentation.

It is important to note, however, that the Board itself has recognized that the issues presented in this case are substantial. For example, we have contended, and will contend in the Court of Appeals, that the Board could not approve the IATA agreements without a full evidentiary hearing. The Board did not hold that this contention was lacking in merit. On the contrary, the Board has now ordered an evidentiary hearing on at least certain major provisions of the agreements, which have been approved for only a limited period pending an evidentiary hearing. Since the Board has held that a hearing

is required in this case, a substantial legal issue is presented as to whether the Board has erred by not holding such a hearing before approving, even for a limited period, any of the challenged IATA agreements.

A further issue to be presented on appeal is whether the Board has erred in granting final approval, without an evidentiary hearing, to the affinity group, incentive, and group inclusive tour fares while at the same time it has withheld final approval and commenced an investigation of the elimination of the round-trip discount and adoption of bulk IT fares. One of NACA's basic contentions in this proceeding has been that an increase in basic fares is an unjustified exercise of monopoly pricing power designed to subsidize an unjustifiable reduction in all of the aforementioned group fares. The Board has conceded in its Order that there is sufficient support for this contention to warrant an evidentiary hearing. Yet it has limited the scope of that hearing to only one of the several group fares involved. No explanation has been given by the Board for treating the bulk fares differently than the other group fares. A substantial issue is thus presented as to whether this difference in treatment is justified.

Moreover, by granting approval to the fare increase and the bulk fare agreements prior to an evidentiary hearing, the Board seems impliedly to have held that those agreements are entitled to approval unless and until NACA and other interested parties can prove that they are adverse to the public interest. In the Court of Appeals, NACA intends to argue that this holding is erroneous as a matter of law and that the Board was required to withhold its approval until an affirmative showing was made by the IATA

carriers that the agreements are in the public interest. This contention is supported by the Board's own prior decisions which hold that "[w]here an agreement has among its significant aspects elements which are plainly repugnant to established antitrust principles, approval should not be granted unless there is a clear showing that the agreement is required by a serious transportation need, or in order to secure important public benefits." Local Cartage Agreement Case, 15 C.A.B. 850, 852-53 (1952). See also IATA Credit Agreements, 30 C.A.B. 1553, 1555 (1960); VOLUMAIR Agreement, 30 C.A.B. 1007 (1960). In light of these precedents, there is at least a serious question as to whether the Board has erred in not withholding even its limited approval of the agreements until their proponents have established that they are consistent with the public interest.

Obviously, the issues mentioned above, as well as the others discussed in our Objections and Complaint, are serious, substantial and fundamental. Although a majority of the Board has decided these issues against NACA, two members of the Board have dissented, and even the majority has recognized the substantiality of the issues presented.

In these circumstances, we submit, the Board should stay its Order pending a final decision of the Court of Appeals. Only in this way can NACA's rights, and the rights of the traveling public, be protected. For, as we shall now show, if the Board's Order is permitted to take immediate effect, the public and the supplemental carriers would suffer severe and irreparable economic injury, even if the Court of Appeals were ultimately to set the Board's Order aside.

UNLESS THE BOARD'S ORDER IS STAYED, BOTH THE  
PUBLIC AND THE NACA CARRIERS WOULD SUFFER  
IMMEDIATE, SEVERE, AND IRREPARABLE ECONOMIC  
INJURY

---

If the Board's Order is not stayed, and the challenged fares are permitted to remain in effect pending NACA's appeal, two obvious economic consequences would necessarily follow: (1) normal-fare round-trip travelers would be required to pay higher fares, and (2) substantial group traffic would be diverted from the supplemental carriers to the IATA carriers. Even if NACA's appeal were ultimately successful - which, as we have seen, is a substantial possibility - there would be no way in this proceeding by which the traveling public and the supplemental carriers could obtain restitution of the economic losses which they would have suffered in the interim.

Since more than 50% of all transatlantic passengers travel at normal fares, the 5% increase in the round-trip fare will result in large additional costs to the traveling public. In light of the substantial doubt as to whether it will ultimately be upheld, we submit that the Board should stay the increase pending appeal. If the Board is unwilling to stay its approval of the 5% increase, it should at least require the carriers to escrow the funds thus obtained, so that they could be refunded to the passengers if the Board's Order is ultimately reversed. Such an escrow arrangement would fully protect the IATA carriers, and simultaneously protect the traveling public.

Because of the serious impact which the new bulk and group fares would have upon the charter business of the supplemental carriers, the Board's



approval of those fares should be stayed pending the decision of the Court of Appeals. The fact that certain of the group fares will not take effect until November 1, 1969, does not reduce the necessity for such a stay. Since group transportation is usually sold months in advance, sales for the post-November 1 period can be expected to begin immediately. And once a group purchases space on a scheduled carrier, it is unlikely to shift to a supplemental carrier even if, as a result of a subsequent decision of the Board or the Court of Appeals, the fare structure is changed.

It is true that the contract bulk IT fares cannot now be marketed because no tour operator has yet been granted authority to sell such tours. But there is no impediment to the immediate sale of the affinity and incentive group fares. And unless the Board's Order is stayed, it is likely that many tour operators will await the Board's grant of exemption to sell the bulk fares rather than assume the greater risks involved in chartering an entire aircraft from a supplemental carrier.

The threat to the supplemental carriers, and to the public, is made all the more serious by the fact that the effort of the supplemental carriers to exercise their ITC authority in the Atlantic market has already been greatly impeded by the failure of many foreign countries to grant landing and uplift rights for the operation of such charters. The introduction of the new bulk and group fares at this time would further frustrate the development of ITC traffic by the supplementals.

As we demonstrated in our Objections and Complaint, it is clear that the array of low group fares adopted by LATA is aimed directly at the

supplemental carriers. Unless the Board stays its approval of those fares until the many serious legal issues involved in this case have been finally resolved on appeal, there is a substantial likelihood that the supplemental carriers will suffer serious and irreparable economic injury before they have even had their day in court.

### III.

#### THE STAY REQUESTED HEREIN WILL NOT CAUSE SIGNIFICANT HARM OR INJURY TO THE IATA CARRIERS

The IATA carriers will no doubt contend that any stay of the Board's Order would create an open-rate situation which would be injurious to the IATA carriers. But this, of course, is a problem which has been created by IATA itself - not the Board or NACA - and with which IATA is able to deal. Surely, IATA had no right to expect that a fare package of this complexity and scope, which presents so many fundamental issues of law and policy, would be finally approved and reviewed prior to May 1.

It should be emphasized that NACA is requesting a very limited stay, which would affect only a small portion of the total IATA package. Moreover, NACA does not insist upon a stay of the 5% increase in normal fares. We would be satisfied to allow that increase to remain effective pending judicial review, so long as the revenues thus obtained are kept in escrow so that they could be refunded to the passengers if the Board's approval of the fare increase resolution is ultimately reversed by the Court.

Thus, the stay requested herein would merely defer the implementation of the new bulk and group fares. Traffic using these fares would constitute only

a comparatively small portion of IATA transatlantic traffic, so that a stay is not likely to cause substantial injury to the IATA carriers. The injury to the supplementals, which are authorized to operate only in the group passenger market, would be of a far greater magnitude.

### Conclusion

For all of the foregoing reasons, this motion should be granted.

Respectfully submitted,

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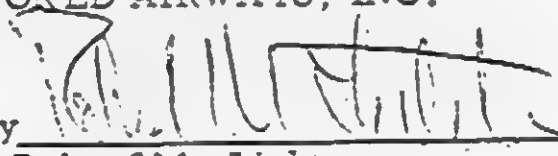
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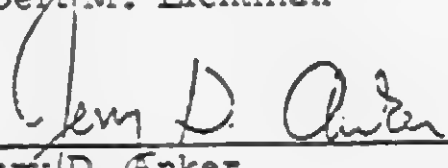
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AMERICAN FLYERS AIRLINE CORP.  
CAPITOL INTERNATIONAL AIRWAYS, INC.  
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SATURN AIRWAYS, INC.  
TRANS INTERNATIONAL AIRLINES, INC.  
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By   
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Counsel for National Air Carrier Association

May 9, 1969

Order 69-6-14

UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D.C.

Adopted by the Civil Aeronautics Board  
at its office in Washington, D.C.  
on the 4th day of June, 1969

-----	:	
Agreements adopted by Joint	:	
Conferences 1-2 and 1-2-3 of	:	Docket 20781
the International Air Trans-	:	Agreement C.A.B. 20848
port Association (IATA) relat-	:	R-1 through R-8
ing to transatlantic fares	:	R-10 through R-12
-----	:	R-14 through R-68

ORDER DENYING STAY

On April 30, 1969, the Board adopted Order 69-4-138 approving various IATA resolutions relating to the transatlantic fare structure. Insofar as the resolutions provided for elimination of the round-trip discount in basic North Atlantic fares and the Contract Bulk Inclusive Tour fares, the Board's approval was limited to the period ending March 31, 1970, and the Board ordered institution of an investigation into those resolutions on an expedited basis.

On May 7, 1969, the National Air Carrier Association and six of its members filed a petition for judicial review of portions of the Board's order. National Air Carrier Association, et. al. v. C.A.B., C.A.D.C. No. 23,012. They challenge the Board's approval of the two resolutions which the Board has set for investigation, and also approval of the North Atlantic Affinity Group fares; the North Atlantic Bulk Affinity and Incentive Group fares--Spain/Portugal; the North Atlantic Incentive Group fares; the North Atlantic Group Inclusive Tour fares; and the proportional fares for California points.

Subsequently, on May 9, 1969, pursuant to Rule 18 of the Federal Rules of Appellate Procedure, six members of NACA filed a motion with the Board for a stay pending judicial review of the order insofar as it approved the above described resolutions. 1/ Answers in opposition have been filed by Pan American World Airways, Inc., and Trans World Airlines, Inc.

1/ As an alternative to stay of the approval of elimination of the round-trip discount, the supplementals request that the IATA carriers be required to place in escrow the increased revenues which they will receive from the elimination of the discount so that refunds can be made to individual members of the traveling public in the event the Board's order is set aside by the Court.

The supplementals contend that the issues presented by their petition for judicial review are "serious, substantial and fundamental" and that a stay pending such review is the only way in which their interests and those of the traveling public can be adequately protected. 2/

Pan American and TWA urge that the supplementals have failed to establish that they are likely to prevail on the merits in the Court of Appeals; that no showing of irreparable injury has been made; that substantial harm will accrue to the IATA carriers if the requested stay is granted; and that the issuance of a stay would be inconsistent with the interests of the traveling public.

Upon consideration of the pleadings the Board is not persuaded that a showing warranting a stay of its order has been made. 3/ As is pointed out in Order 69-4-138, the Contract Bulk Inclusive Tour fares "are lower than any fares ever offered in scheduled service on the Atlantic" and will "enable many persons to travel by air who would not otherwise be able to use air transportation." Issuance of a stay would deprive those persons of this opportunity. It would also deprive those who would otherwise travel of the advantage of the reduced rates. In the Board's opinion this would be contrary to the public interest.

We recognize that to permit the fares to remain in effect pendente lite may well subject the supplementals to some diversion of revenues. They have not, however, attempted in their pleadings before the Board to document the extent of the competitive impact upon them, much less to show that the impact would be crippling. In these circumstances the Board finds no basis for believing that the supplementals will suffer irreparable injury in the absence of a stay and balancing their interests against the interests of the public (as well as those of the IATA carriers) points to denial of a stay.

2/ Their principal contentions in the Court of Appeals are that the Board erred in approving the agreements without a hearing; that it abused its discretion in granting final approval of the resolutions covering affinity group fares, incentive group fares, and group inclusive tour fares while withholding final approval of the agreements which the Board has set for investigation. They also contend that the fare structure is simply a predatory scheme to divert traffic from the supplementals by utilizing the extra revenues derived from elimination of the round-trip discount to subsidize unreasonably low group fares; and that the fares are unlawful under accepted rate-making standards.

3/ The Board finds no basis for complying with the escrow request made by the supplementals.

- 3 -

Finally, the Board is not convinced that the supplementals' contentions on the merits of the petition for judicial review are substantial. Indeed, for the most part they merely repeat arguments previously advanced and found by the Board to be without merit.

ACCORDINGLY, IT IS ORDERED:

That the Motion of Member Carriers of the National Air Carrier Association to Stay Portions of Order 69-4-138 pending judicial review be and it hereby is, denied.

By the Civil Aeronautics Board:

MABEL McCART

Acting Secretary

(SEAL)

BEFORE THE  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D.C.

-----  
DATA TRANSATLANTIC FARE :  
AGREEMENTS :  
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Docket 20781  
Agreement C.A.B. 20428

ANSWER OF MEMBER CARRIERS OF THE NATIONAL  
AIR CARRIER ASSOCIATION TO PETITIONS FOR  
RECONSIDERATION OF ORDER 69-4-138

The undersigned supplemental air carriers, represented by the National Air Carrier Association (NACA) as their attorney-in-fact, oppose the petitions for reconsideration of Order 69-4-138 filed by American Express Company (Amexco), Creative Tour Operators Association (CTOA), <sup>1/</sup> Pan American and TWA, insofar as they seek extension beyond March 31, 1970 of the Board's approval of the contract bulk inclusive tour (CBIT) fare agreement. In view of the Board's rejection of NACA's previous objections to the group inclusive tour (GIT) fares, <sup>2/</sup> NACA, while preserving those objections, does not oppose extension of the Board's approval of the GIT fares to the period after April 1, 1970.

In support whereof, the NACA carriers state as follows:

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- 1/ CTOA's members are 24 tour operators, one of whom is Amexco. Despite CTOA's repeatedly expressed concern for retail travel agents (pp. 1, 13), neither ASTA nor any other group of retail agents has sought reconsideration of Order 69-4-138.
  - 2/ Although NACA opposed approval of the GIT fares before the Board, it did so on the ground that as a matter of law the tour basing feature rendered them unjustly discriminatory. NACA did not oppose the fare increase or changed terms in the post-April 1, 1970 GIT fare agreement. See NACA Objections and Complaint, p. 29.



Statement

In Order 69-4-138, April 30, 1969, the Board limited its approval of the IATA agreements eliminating the round-trip discount on normal fares and adopting CBIT fares to the period ending March 31, 1970. With respect to the period April 1, 1970 - March 31, 1971, it instituted an evidentiary investigation. In determining to investigate the CBIT fare agreement, the Board made clear its reasons (p. 5):

"The Board . . . notes the contention of the supplemental carriers that these fares are uneconomic, and have been designed to capture supplemental carrier charter traffic. These allegations can best be fully explored through a formal hearing. The Board believes that sufficient question has been raised to require that they be included in the investigation."

With regard to the IATA agreements covering GIT fares, the Board deferred action on the agreement scheduled to become effective on April 1, 1970 (pp. 4, 15). It failed to give any reasons for its action, other than to note that the agreement provided for fare increases that were "modest" and were "based on an \$8.00 increase New York-London" (p. 2).

In their petitions for reconsideration, the tour operators, Amexco and CTOA, argue in substance that they require some group tour basing fare, the terms of which are settled well in advance of the 1970 summer season. Amexco does not appear to draw any substantial distinction between the GIT and CBIT fares and refers to them collectively as the "Promotional Fares." And CTOA states that for most of its members, the GIT fares "constitute the principal tour-basing fare . . ." (p. 8).

NACA opposes any extension of the Board's approval of the CBIT fares. In the first place, we submit that the Board lacks jurisdiction to alter the portion of its order dealing with the CBIT fare agreement in

view of the pendency of NACA's petition for review in the U.S. Court of Appeals. As to the merits, the Board should not extend the effectiveness of fares designed to destroy in their infancy the supplementals' transatlantic ITC operations as well as to divert substantial affinity charter traffic from the supplementals. (See NACA Objections and Complaint, filed April 4, 1969, pp. 12-19.) It is by reason of these apparent motives, and the extremely low fare levels, that the Board has determined to investigate the CBIT fares. It would be strange indeed if the Board permitted the fares to be effective during the 1970 summer season, when the vast bulk of the traffic in question would be carried, and limited its investigation to the few off-season months remaining under the agreement.

We do not, however, subject to the reservation previously stated (p. 1), oppose the requested reconsideration of the Board's deferral of action on the post-April 1, 1970 GIT fare agreement (Version II, Resolution 204a). Approval of that agreement would provide the tour operators with the assured group tour basing fare that they assert is needed in order to plan their tour programs for the summer of 1970. It would also obviate any alleged need for extending the period of the Board's approval of the CBIT fares in advance of a decision in the forthcoming investigation.

#### I.

On May 7, 1969, NACA filed a petition in the U. S. Court of Appeals for the D.C. Circuit seeking review, inter alia, of the Board's order insofar as it approved the CBIT fare agreement. (No. 23012, D.C. Cir.) A copy of that petition was transmitted to the Board and, upon

such transmittal, the Court became possessed of "exclusive jurisdiction to affirm, modify or set aside the order complained of, in whole or in part . . ." (Section 1006(d), 49 U.S.C. §1486(d)).<sup>3/</sup> The Board is thus without jurisdiction to extend its approval of the CBIT fares on reconsideration. See United States Lines Co. v. CAB, 165 F.2d 849, 852 (2nd Cir. 1948).

## II.

A. With respect to the merits of the Board's action on the CBIT fare agreement, the petitions fail to present any new facts. We disagree with CTOA's suggestion that "the Board may not have sufficient familiarity with and understanding of the workings of the transatlantic tour business" (p. 3). The Board, we think, understood that although a substantial lead time is required for planeload-size groups, arrangements for groups as small as 40 or 20 can normally be made within a shorter period.

Moreover, the Board undoubtedly understood that to approve the CBIT fares at this time for effectiveness during the 1970 summer season would greatly diminish the significance of its investigation of the fares. CTOA estimates that "upwards of 95% of all transatlantic group tours are operated between the months of April and October and only 2-5% during the five month November-March period . . ." (p. 11; emphasis in original). Similarly, Amexco says that "more than 95% of its North Atlantic tours for the year ending October 31, 1970 will

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<sup>3/</sup> Compare Section 402(c) of the Communications Act of 1934, 47 U.S.C. §402(c), which does not provide for "exclusive" jurisdiction of the Court. See Wrather-Alvarez Broadcasting, Inc. v. FCC, 248 F.2d 646 (D.C. Cir. 1957).

commence subsequent to March 30, 1970" (p. 3, n. 3). To be sure, the off-season traffic is not unimportant, as the supplementals' stay motion in the Court of Appeals makes clear. But approval of the CBIT fares for the 1970 peak season would multiply many times the economic injury which the supplementals will suffer under the Board's existing order. Further, such approval would mean that perhaps 90% or more of the traffic in issue would travel under the fares even if the Board in late 1969 or early 1970 should find them to be adverse to the public interest. Surely, Board action of this kind cannot be justified as an "experiment" aimed at providing evidence for use in the investigation. (See TWA petition, passim; CICA petition, p. 11, n. 5.)

3. With regard to the contentions of the IATA carriers, it is important to note, first, that the time problem is one of IATA's own making and, second, that as the matter now stands the burden of proof lies with the IATA carriers to establish that the fare agreement is not adverse to the public interest.

As to the first point, Amexco states that "the timing of the filing of the agreements with the Board, were and are largely beyond the control of the tour operators" (p. 5). The statement is certainly true with respect to the supplementals and, we suspect, the Board. The Board has correctly found that an evidentiary investigation is needed in order to determine whether the CBIT fares are adverse to the public interest and/or unjustly discriminatory. It should not, we submit, retreat from that finding in order to protect the IATA carriers against a situation for which they alone are responsible.

As to the second point, if a presumption must be made at this time regarding the validity of the CBIT agreement, the Board must presume

it to be adverse to the public interest. This follows from the Board's line of decisions clearly holding that Section 412 agreements in violation of the antitrust laws require as a prerequisite to approval that "their proponents have made a clear showing of the need for approval to fill a serious transportation need or secure important public benefits." IATA Credit Agreements, 30 C.A.B. 1553, 1555 (1960); Local Cartage Agreements, 15 C.A.B. 850, 852-53 (1952). Here, the CBIT fare agreements not only constitute a price-fixing agreement but they are part of an apparent scheme to eliminate the charter competition of the supplementals by raising fares in a segment of the market in which the IATA carriers have a virtual monopoly and sharply reducing fares in that segment of the market to which the supplementals are restricted. The IATA carriers have certainly failed to show any overriding public need for the CBIT fares which would justify an egregious antitrust violation of this kind.

### III.

Extension of the effective date of the CBIT fares is not necessary to meet the needs of the tour operators, or members of the traveling public using their services. The ITC and affinity charter services of the supplementals are, of course, available for the summer of 1970. Moreover, insofar as an assured IATA group tour basing fare is required, the petitions of both Amexco and CTOA make clear that approval of the GIT fare agreement through the summer of 1970 would fully satisfy their asserted needs.

Amexco's petition, as we have noted, draws virtually no distinction between the GIT and CBIT fares. During 1968, Amexco utilized the GIT fares for 800 tours (p. 6). CTOA views the GIT as the

"principal tour-basing fare" and as "a staple of the tour operators' business at the current time" (pp. 8, 15). There is nothing in either of their petitions to suggest that they require assured approval of both the GIT and CBIT fare agreements in order to carry out their advance tour planning for the summer of 1970.

The Board should not afford the slightest weight to the tour operators' apparent argument that since some tour operators intend to "gamble on approval" of the CBIT fares in the investigation (Amexco, p. 12), the requested extension should be granted in order to avoid inconvenience to the traveling public in the event of disapproval or modification of the fares. The interests of the traveling public and the integrity of the Board's processes, we submit, clearly preclude such a "gamble." Further, the tour operators, as indirect air carriers under the CBIT fare agreement, do not now possess authorization to market the fares; and the IATA carriers cannot book space under the CBIT fares for periods not approved by the Board without incurring antitrust liability.

Finally, there has not been any showing that substantial benefit to the U. S. balance-of-payments position would result from extension of the effective date of the CBIT agreement. Most of the westbound traffic utilizing the fares would be diverted either from the charter services of the supplementals or the higher-priced services of the IATA carriers. Unless and until an evidentiary investigation proves otherwise, there is simply no basis for believing that the CBIT fares would materially improve the U. S. balance-of-payments position.

#### Conclusion

Approval of the CBIT fare agreement through the peak season of 1970 in advance of the Board's investigation would result in irreparable

economic injury to the supplementals if the Board should ultimately disapprove the agreement. It would mean that carriage of perhaps 90% or more of the traffic in question would be allowed while the Board's investigation would affect only the remaining 10% or less. Moreover, as shown by their own petitions, approval of the CBIT fare agreement is not required to satisfy the tour operators' needs, which would be fully met by approval of the post-April 1, 1970 GIT fare agreement.

For all of the foregoing reasons, the petitions for reconsideration, insofar as they seek extended approval of the CBIT fare agreement, should be dismissed for lack of jurisdiction or, in the alternative, denied.

Respectfully submitted,

AMERICAN FLYERS AIRLINE CORPORATION  
CAPITOL INTERNATIONAL AIRWAYS, INC.  
MODERN AIR TRANSPORT, INC.  
OVERSEAS NATIONAL AIRWAYS, INC.  
PURDUE AIRLINES, INC.  
SATURN AIRWAYS, INC.  
SOUTHERN AIR TRANSPORT, INC.  
STANDARD AIRWAYS, INC.  
TRANS INTERNATIONAL AIRLINES, INC.  
UNIVERSAL AIRLINES, INC.  
WORLD AIRWAYS, INC.

By \_\_\_\_\_

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Counsel for National Air Carrier Association

June 6, 1969



UNITED STATES OF AMERICA  
CIVIL AERONAUTICS BOARD  
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board  
at its office in Washington, D. C.,  
on the 10th day of July, 1969

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Agreements adopted by the :  
International Air Transport :  
Association (IATA) relating to :  
transatlantic promotional fares :  
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Docket 20781  
Agreement C.A.B. 20848

ORDER

By Order 69-1-138, the Board approved various IATA transatlantic fare resolutions subject to certain conditions. The Board, inter alia, limited to March 31, 1970, its approval of the contract bulk inclusive tour (CBIT) fares intended for effectiveness from November 1, 1969, through March 31, 1971, and it set this element of the resolutions down for an expedited investigation along with the discontinuance of the round-trip discount. The Board also deferred action on the group inclusive tour (GIT) fares intended for effectiveness April 1, 1970, through March 31, 1971. The latter would impose roughly a \$10.00 increase in the round-trip fares and tighter tour requirements than those that now apply.

Petitions for reconsideration of one or both of these resolutions have been received from Pan American World Airways, Inc. (Pan American), Trans World Airlines, Inc. (TWA), American Express Company, (AMEXCO), Creative Tour Operators (CTOA), and Flying Mercury, Inc. In general, the petitioners seek an extension of approval of the resolutions in question through the 1970 summer season--through varying dates up to October 31, 1970. A statement has also been received from the Secretary of Commerce suggesting that the CBIT fares be approved through the 1970 summer season and asking that the Board act now on the GIT fares so as to remove the present uncertainty over the latter fares for next year. Pan American has filed a motion to file an unauthorized document supplementing its petition. The Board will grant the motion and consider the supplement.

The principal thrust of the petitions is that the carriers and the travel industry have an urgent need for some degree of certainty as to the fares and the rules that will be available for inclusive tour travel in the 1970 summer season because of the lead time normally required for planning and marketing

1/ NACA has filed a motion for leave to file an unauthorized document, namely, a response to the Secretary of Commerce's statement. This motion will be granted.

- 2 -

tours. It is contended that the planning and marketing of promotional programs for the next summer season cannot be accomplished in short notice-- that effective marketing requires a lead time beginning

Both Pan American and TWA advert to the Board's delayed approval of the CBIT fares through March 31, 1970, as a means of gaining some experience under these fares, and, in substance, both believe that the test would be meaningless since approval would be limited to an off-season period.

AMEXCO argues that tour operators are faced with two alternatives-- either to delay the marketing of the tours until the Board has resolved the lawfulness of the promotional fares or to proceed on the assumption that the fares in question will be approved for application next summer. AMEXCO contends that if it follows the second alternative, and the fares are not available in the 1970 summer season, serious public inconvenience would result and that this situation would prove disastrous for AMEXCO. In addition to wasted expenditures, its reputation of honoring commitments would be at stake. Finally, AMEXCO believes that the Board's action on these promotional fares will deter westbound travel to the United States, since definitive fares to the other vacation spots will be available on terms known in advance.

The National Air Carriers Association (NACA) filed an answer to the petition for reconsideration. NACA does not oppose the extension of the Board's approval of the GIT fares beyond April 1, 1970, but it expresses strong opposition to an extension of the Board's approval of the CBIT fares.<sup>2/</sup>

Upon consideration of the record and all relevant matters, the Board will deny the petitions to extend approval of the CBIT fares, but will approve the GIT fares for their intended effectiveness, i.e., April 1, 1970, through

<sup>2/</sup> NACA says that the Board lacks jurisdiction to reconsider its order on the CBIT fares because of the pendency of NACA's petition for judicial review of such order in the U. S. Court of Appeals for the District of Columbia Circuit. National Air Carrier Association, et al. v. Civil Aeronautics Board, C.A.D.C. No. 23,012, filed May 7, 1969. In view of our denial of the requests to extend approval of the CBIT fares, no question of our jurisdiction is presented. Anchor Line v. Federal Maritime Commission, 299 F.2d 124 (C.A.D.C., 1962); Frontier Airlines, Inc. v. Civil Aeronautics Board, 259 F.2d 808 (C.A.D.C., 1958).

March 31, 1971.<sup>3</sup> The Board ordered this investigation of the CBIT fares in the light of contentions by the supplemental air carrier industry that these fares are unreasonable and that they would be seriously injured by them. There is nothing in the petitions for reconsideration which was not considered before we issued Order 69-4-138 or that would now resolve these issues.

The contention that failure to approve the CBIT fares now for the period beyond March 31, 1970, will impair the carriers' and tour operators' ability to mount a successful inclusive tour program during the 1970 season, if valid, does not override the need to test the lawfulness of those fares before they come into general use during the peak season travel period when they could have a serious potential effect on the supplemental carriers. There is no question here of discontinuing a long-established tour basing fare to the detriment of persons who have been relying on that fare. The question is whether a newly designed promotional fare meets the statutory tests of lawfulness and whether the implementing agreement should be approved for the future.

The theory that some persons may gamble on eventual approval of the CBIT fares, going forward now with tour programs based on such fares, to the ultimate inconvenience and disadvantage of the traveling public if the fares are later disapproved, is no valid basis for applying the fares at this point for use during the peak 1970 travel season. Moreover, our approval herein of the GIT fares for the full term of the resolution should afford the tour industry an adequate basis for a full tour program during the summer of 1970.

<sup>3</sup> Although the Board earlier decided to defer action at this time on the GIT fares for effectiveness on and after April 1, 1970, in light of the contentions that the fares and rules applicable to inclusive tours for the 1970 season must be established now, we will pass on the GIT agreements at this time. The increases in the round-trip GIT fares proposed, generally \$10.00, are minimal, and the Board has historically allowed the carriers a measure of discretion in establishing promotional fares. In addition, the proposed changes in the rules governing the applicability of the GIT fares are not unreasonable and should improve the economics of these fares. For example, GIT rules would (1) place a limitation on the number of allowable stopovers, and (2) require sightseeing as part of the minimum tour price. Current GIT rules (1) have no restriction on the number of stopovers, and (2) do not require sightseeing as part of the minimum tour price.

- 4 -

Accordingly, IT IS ORDERED THAT:

1. The motions of Pan American World Airways, Inc., and the National Air Carriers Association to file unauthorized documents are granted;
2. Petitions requesting an extension of the Board's approval of the contract bulk inclusive tour fares are denied;
3. Group inclusive tour fares intended for effectiveness from April 1, 1970, through March 31, 1971, on which Board action was deferred, are approved; and
4. To the extent not granted, all other petitions, complaints, and requests relating to the extension of approval of the CBIT fares and/or approval of the GIT fares are hereby denied.

This order will be published in the Federal Register.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON

Secretary

(SEAL)

MEMBERS GILLILLAND AND ADAMS WOULD HAVE GRANTED THE PETITIONS AS FILED.

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 23,012

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NATIONAL AIR CARRIER ASSOCIATION; AMERICAN FLYERS AIR-  
LINE CORPORATION; CAPITOL INTERNATIONAL AIRWAYS, INC.;  
OVERSEAS NATIONAL AIRWAYS, INC.; SATURN AIRWAYS, INC.;  
TRANS INTERNATIONAL AIRLINES, INC.; WORLD AIRWAYS, INC.,  
*Petitioners,*

v.

CIVIL AERONAUTICS BOARD,

*Respondent,*

PAN AMERICAN WORLD AIRWAYS, INC., et al.,

*Intervenors.*

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*On Petition for Review of Orders of the  
Civil Aeronautics Board*

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**BRIEF FOR PETITIONERS**

United States  
for the District of Columbia Circuit

**FILED**

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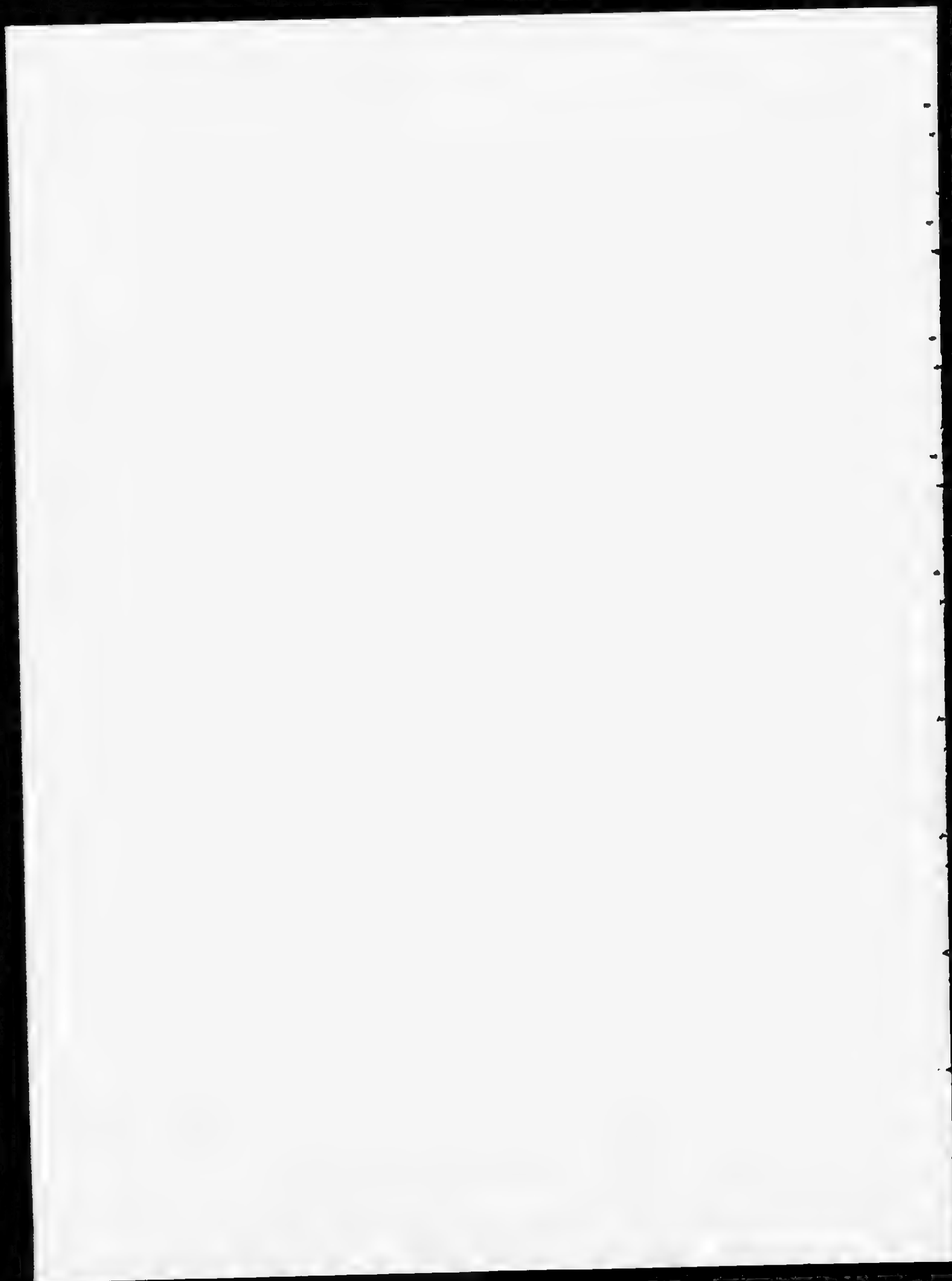
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*On Petition for Review of Orders of the  
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BRIEF FOR PETITIONERS  
STATEMENT OF ISSUES PRESENTED

1. Whether the Civil Aeronautics Board was required to hold an evidentiary hearing before deciding whether to approve certain Resolutions adopted by member air carriers of the International Air Transport Association (IATA) establishing new transatlantic passenger fares where (a) the challenged fares were discriminatory on their face and (b) the Resolutions constituted plain violations of the anti-trust laws.

2. Whether the Board erred in approving the IATA fare Resolutions without making any findings as to (a) whether the discriminations under the fares were justified and (b) whether the Resolutions filled a "serious transportation need" or secured "important public benefits" of a sufficient magnitude to override the fact that they violated the antitrust laws.

This case has not previously been before the Court, except that a motion for a stay pending review was previously filed herein by petitioners on May 22, 1969, and denied by the Court in an order dated June 12, 1969.

#### REFERENCES TO RULINGS

The initial order of the Civil Aeronautics Board under review (Order 69-4-138) was issued on April 30, 1969 and is reproduced at p. 254 of the Appendix. Thereafter, various parties filed petitions for reconsideration of that order, and on July 16 the Board issued order 69-7-81 denying in part and granting in part such petitions for reconsideration. That order is reproduced at p. 290 of the Appendix. Neither of these orders has yet been officially reported.

#### STATEMENT OF THE CASE

This case is before the Court on an Amended Petition for Review<sup>1</sup> of the above-mentioned orders, in which the Board approved (subject to certain conditions and limitations) a group of Resolutions adopted by traffic conferences of the International Air Transport Association (IATA) which establish new passenger fares for scheduled airline flights in the transatlantic market for the period May 1, 1969

<sup>1</sup>The original Petition for Review herein was filed prior to the filing by other parties of petitions for reconsideration before the Board. Thus, when the Board issued its order on reconsideration, it was necessary to amend the Petition for Review to bring that order before the Court. Leave to file the Amended Petition for Review was granted by the Court on August 11, 1969.

through March 31, 1971. Certain of the Resolutions were approved only through March 31, 1970, and an evidentiary investigation, now in progress, was instituted to determine whether they should be approved beyond that date.

IATA is an association of scheduled international air carriers, and includes among its members virtually all air carriers operating scheduled transatlantic passenger services. One of the functions of IATA is to establish international air fares by agreement among its member carriers. Under Section 412 of the Federal Aviation Act, 49 U.S.C. § 1382, such agreements must be filed with the Board, which must then determine whether they are "adverse to the public interest" or "in violation of this Act." Board approval immunizes such fare agreements from the operation of the antitrust laws. Section 414 of the Act, 49 U.S.C. § 1384. In addition, fares established under IATA agreements must comply with the non-discrimination provisions of the Act. Sections 404(b), 1002(f), 49 U.S.C. §§ 1374 (b), 1482(f).

Petitioners are the National Air Carrier Association (NACA), a trade association of supplemental (or charter) air carriers,<sup>2</sup> and six NACA member carriers which hold certificates of public convenience and necessity authorizing them to operate transatlantic passenger charter flights. None of the petitioners are affiliated with IATA, which does not admit supplemental airlines to membership. In the proceedings before the Board, NACA, on behalf of its member carriers, urged the Board to disapprove certain of the IATA Resolutions.

<sup>2</sup>Under the Act, " 'Supplemental air transportation' means charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401 (d)(1) and (2) of this Act." Section 101(33), 49 U.S.C. § 1301(33).

on the grounds that they were adverse to the public interest and that the fares provided therein were unjustly discriminatory in violation of Section 404(b) of the Act.

The IATA Resolutions involved in this case were filed with the Board on February 26, 1969, and the fare tables relating thereto were filed on March 3, 1969. Thereafter, the Board received written statements from interested parties in support of and in opposition to the fares set forth in the Resolutions, but denied repeated requests by NACA for a full evidentiary hearing (except to the extent hereinafter described). Considering the importance and complexity of the issues presented, the proceeding before the Board was handled with extraordinary haste. After statements in support of the Resolutions were filed on March 14, 1969, NACA and other opponents of the fares were given only three weeks—until April 4—to file objections and complaints. Oral argument was held on April 16, and eight days later a press release was issued by the Board outlining the substance of its decision. The Board's formal order was issued on April 30, and its order on reconsideration was issued on July 16.

### The Disputed Fares

The Resolutions which are in issue in this case are part of a comprehensive transatlantic fare "package" negotiated at meetings of IATA traffic conferences held at Cannes, France, in the Fall of 1968 and at Dallas, Texas, from January 8 to February 1, 1969. The entire package consists of some 275 pages of Resolutions and several hundred additional pages of fare tables. In general, the fares became effective on May 1, 1969, although certain fares were given later effective dates, and are to remain in effect through March 31, 1971.

The fare agreements in issue provide, first, for increases in the normal round-trip fares to be charged to individually-ticketed passen-



gers traveling first or economy class. These increases, which affect the more than 50 percent of all transatlantic passengers who travel at normal fares, are in the form of the elimination of a 5 percent discount which was previously available to persons purchasing round-trip tickets. For example, the new fares increase the cost of a round-trip economy ticket between New York and London from \$399 to \$420 during the off-season, and from \$484.50 to \$510.00 during the peak summer season.

Second, the agreements provide for substantial reductions in group fares and the establishment of new "contract bulk inclusive tour" fares (hereinafter sometimes referred to as "bulk fares") at unprecedented low rates. The group and bulk fares which NACA challenged before the Board, and which are in issue here, can be briefly described as follows:

*Contract Bulk Inclusive Tour Fares* - This is an entirely new set of fares, available to tour operators purchasing 40 or more seats eastbound or 20 or more seats westbound, for use solely in connection with inclusive tours (i.e., a package including air fare and ground accommodations, such as hotels, sightseeing, etc.), which the tour operator would organize and sell to individual members of the general public. The bulk fares are far below normal fares. For example, the New York-London round-trip bulk fare would be \$220 in the peak summer season, \$190 in the so-called "shoulder" season, and \$175 in the off-season. The effective date for the bulk fares is November 1, 1969. (A. 168-84)

*Affinity Group Fares* - These fares are available only to groups comprised of members of an organization which exists primarily for purposes other than travel, and which meet other prescribed limitations. The fares vary with the size of the group and the season of the year, with the lowest fares applicable to affinity groups of 40 or

more traveling outside the peak season. These fares, which were formerly \$245-\$267 New York-London round trip, would be cut to \$200-\$212. The effective date for the affinity group fares under review is November 1, 1969. (A. 157-65)

*Incentive Group Fares* - These fares, newly established by the IATA agreements, are available only to a business corporation or firm to transport groups of employees, dealers or agents who are traveling under an incentive program established and paid for by the sponsoring firm. An incentive program is defined as one "which rewards an employee for past work or provides an incentive for future activities. . ." (A. 166) The fares are available to groups of 40 or more eastbound and 20 or more westbound, traveling outside of the peak season, and range from \$200-\$212 New York-London round trip. The effective date for the incentive group fares is November 1, 1969. (A. 166-67)

*Group Inclusive Tour (GIT) Fares* - These fares are available to groups of 15 or more purchasing package tours from a tour operator, which must include a specified minimum expenditure for ground accommodations. The New York-London GIT fares range from \$230 to \$280 until March 31, 1970, and from \$238 to \$288 thereafter. (A. 185-97)

*California Proportional Fares* - For the purpose of computing fares from various United States points other than New York, the IATA agreements provide that specified amounts (called "proportional fares") shall be added to the applicable New York-Europe fares. The new agreements sharply reduce the Los Angeles and San Francisco proportional fares for incentive groups and certain affinity groups from \$212-\$290 to \$130 round-trip, and provide similarly reduced proportional fares for approximately 15 California points. The proportional fares for other United States points remain largely unchanged. Thus, the \$130 San Francisco/Los Angeles proportional

fare compares with a \$218 fare for Albuquerque, \$192 for Denver, \$220 for El Paso, \$146 for New Orleans, and \$134 for Kansas City. The same low Los Angeles/San Francisco proportional fares are made applicable to the bulk fares. (A. 183) The effective date for the proportional fares under review is November 1, 1969. (A. 133-45)

The group and bulk fares summarized above are very close to—and in some instances lower than—the per-passenger price of charter flights operated by supplemental air carriers. The supplementals' civil charter business falls into three main categories: pro rata charters, single entity charters, and inclusive tour charters. A pro rata charter is one in which an organization (e.g., a bar association or religious or ethnic organization) charters an aircraft for the use of its members, with the passengers dividing the cost of the charter between them. A single entity charter, as the name implies, is one in which a business or other entity charters an aircraft at its own cost for the purpose of transporting a group of its employees, customers, etc. An inclusive tour charter (ITC) is one in which a CAB-authorized tour operator charters an aircraft for use in connection with a package tour (including land accommodations), which the tour operator then markets to the general public.<sup>3</sup>

The records of the conferences at which the IATA fares were adopted clearly indicate that one of the principal goals of the IATA carriers in adopting the low bulk and group fares was to undercut the charter business of the supplementals. Thus, F. J. Crosson of Pan American, who was Chairman of the IATA Charter Study Group, is quoted in the minutes of the Cannes meeting as stating "that it was imperative that IATA do everything possible to divert charter traffic to scheduled services." (A. 96) The Charter Study Group specifically recommended adoption of low group inclusive tour and affinity

<sup>3</sup>IATA carriers are also authorized to perform pro rata and single entity charters but not inclusive tour charters.

group fares on the ground that they would "(i) generate new traffic, (ii) divert a substantial part of the present traffic from affinity charters now operated by both IATA and non-IATA carriers, (iii) compete effectively with the charter rates now being offered by the Supplementals for use with inclusive tours, and (iv) prevent any substantial diversion of traffic to the Supplemental carriers' inclusive tour charters." (A. 96-97) TWA, in an intra-company memorandum prepared immediately prior to the Dallas meeting, stated that the bulk fare concept "can be effectively utilized to prevent, or at least limit, the ITC [inclusive tour charter] potential of the supplementals." (A. 98).

#### The Proceedings Before the Board

On March 3, 1969, shortly after the IATA Resolutions had been filed, the Board issued an order (A. 10) establishing the following schedule for the receipt of written comments.<sup>4</sup>

Full documentation and economic justification from the carriers	March 13, 1969
Complaints and objections from interested parties	March 27, 1969
Answers to complaints	April 7, 1969

<sup>4</sup>In the same order, the Board approved one of the IATA Resolutions, which provided that the existing fares, which were due to expire on March 31, would remain in effect until April 30, 1969, or until such time as the new Resolutions became effective, whichever was later. (IATA Resolution 002g, A. 131.) Since the new Resolutions provided that they would not become effective until the necessary approval had been obtained from the various governments involved, this extension would have preserved the status quo until such time as the CAB granted its approval to the new fares. However, on March 10, IATA advised the Board by letter that the Resolution in question had been revised to provide that the existing fares would expire on April 30th irrespective of whether the new Resolutions were approved by that date. See Exhibit F to Petitioner's Motion for Stay Pending Review, filed May 22, 1969.

On March 7, NACA filed a Petition for Reconsideration of the Board's procedural order (A. 12), asking the Board "to order a full evidentiary investigation" to determine whether the elimination of the round-trip discount on normal fares and the establishment of the bulk and group fares described above were lawful and in the public interest. NACA argued that the mere exchange of written pleadings would not provide the Board with an adequate record on which to make the determinations required under the Act. NACA pointed out, *inter alia*, that a proper evaluation of the public interest considerations under Section 412 required an analysis of extensive economic data which could only be properly presented in an evidentiary hearing, and that restrictive features of the bulk and group fares required a hearing to determine whether they were unjustly discriminatory within the meaning of Sections 404(b) and 1002(f).

On March 14, while NACA's Petition for Reconsideration was still pending, Pan American World Airways and Trans World Airlines both filed statements in support of the IATA Resolutions, in accordance with the Board's procedural order. (A. 20,40) These documents were comparatively brief and, in NACA's view, failed to include the kind of economic information—such as cost data, traffic projections, load factor data, diversion estimates—required to determine whether the agreements are in the public interest and whether the fares are unjustly discriminatory. Accordingly, NACA applied to the Board for subpoenas (A. 60-64) requesting extensive additional documentary evidence from Pan American, TWA and IATA. At the same time, NACA filed a motion to suspend the Board's procedural schedule pending compliance with the subpoenas. (A. 65)

On March 26, 1969, the Board's Chief Examiner issued a Notice (A. 82) denying NACA's motion to suspend the procedural schedule, and extending by only eight days the time for filing complaints and objections to the IATA Resolutions, and for filing answers thereto.

Meanwhile, TWA, Pan American and IATA had submitted some documents in response to NACA's subpoenas, but the carriers had also filed motions to quash substantial portions of those subpoenas. (A. 72, 78) For example, TWA objected to producing any intra-company documents only part of which came within the scope of the subpoena. The motions to quash were granted by the Board's Chief Examiner on April 3, 1969 without any statement of reasons. (A. 83) On April 11, NACA petitioned the Board to review the Chief Examiner's ruling.

On April 4, in accordance with the schedule which the Board had established, NACA filed its "Objections and Complaint" against the IATA agreements. (A. 84). In that document, NACA once again objected to the procedure which the Board had adopted, urging that the Board had simply not provided for the development of "the kind of comprehensive factual record needed to decide the complex and difficult issues presented in this case." NACA pointed out that the economic data which the IATA carriers had presented was far less detailed and comprehensive than is ordinarily presented in the most routine fare investigations; that the lack of opportunity for cross-examination made it difficult to evaluate even that data which had been submitted; and that NACA's effort to obtain pertinent information by use of the Board's subpoena power had been largely frustrated by the motions to quash. Accordingly, NACA again requested the Board to order a full evidentiary hearing.

Turning to the merits, NACA contended that on the basis of the inadequate record before it, the Board could only conclude that the IATA agreements were adverse to the public interest within the meaning of Section 412(b) and that the various group and bulk fares were unjustly discriminatory and thus unlawful under Section 404(b) of the Act. It argued that there was no justification for IATA's decision to increase the normal fares to be paid by the ma-



jority of transatlantic passengers; that these increases, which were applicable only in that portion of the market (i.e., individually-ticketed air transportation) in which the IATA carriers enjoy a monopoly position, were simply a means of subsidizing the reduced group and bulk fares designed to divert traffic from the supplemental carriers (which are authorized only to transport groups of passengers); that under established ratemaking criteria the new or reduced group and bulk fares were unreasonably low, and that they were, in addition, unjustly discriminatory and/or unduly preferential.<sup>5</sup>

A number of other parties also filed objections to various aspects of the IATA agreements. The National Industrial Traffic League, representing business travelers, strongly opposed the elimination of the 5 percent discount on normal round-trip fares, arguing that "it is eminently unfair, and unjustly discriminatory with respect to the position of the business traveler to allow scheduled air carriers to subsidize their competitive efforts to capture vacation passenger traffic by imposing a wholly arbitrary elimination of the 5% discount feature in connection with international business travel."

On April 4, the Board issued an order setting the case for oral argument on April 16, 1969, "in light of the considerable controversy surrounding the agreement," but reaffirming its denial of an evidentiary hearing and of any further revision of its procedural schedule. (Order 69-4-30, April 4, 1969.)

The oral argument was held as scheduled. Eight days later, on April 24, the Board issued a press release announcing the action it intended to take in this proceeding. The Board's formal order was issued on April 30.

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<sup>5</sup>NACA also contended that any tour operator using the new bulk fares would be indirectly engaged in air transportation without authorization (see Section 101(3) of the Act, 49 U.S.C. § 1301(3)).



### The Board's Decision

The Board's April 30 order, after summarizing the essential provisions of the IATA Resolutions, reviewed the contentions of the various parties. Referring to the argument of NACA and others that the increase in normal fares was unjustified and designed to subsidize low group fares directed at the business of the supplementals, the Board stated:

"These contentions, together with data included in the most recent IATA cost committee report, and the 1968 rate of return experienced by TWA for transatlantic operations (14.5 percent excluding investment credits) point to the need of an expedited investigation as to the elimination of the round-trip discount. . . ." (A. 257) .

With respect to NACA's contentions that the new bulk fares were "uneconomic, and . . . designed to capture supplemental carrier charter traffic," the Board said:

"These allegations can best be fully explored through a formal hearing. The Board believes that sufficient question has been raised to require that they be included in the investigation. The investigation of the contract bulk inclusive tour fares will include within its scope the issue of unjust discrimination and undue preference and prejudice stemming from the relationship of the proportional fares (add-on to the New York fares) applicable to specified California points as compared with the add-ons to other United States points." (A. 258)

Notwithstanding its conclusion that sufficient question had been raised with respect to the increase in normal fares and the new bulk fares to require a full hearing, the Board granted approval of these Resolutions through March 31, 1970, and directed that the hearing

be held for the sole purpose of determining whether approval should be granted beyond that date. Further, and virtually without discussion, the Board granted full approval to the IATA Resolutions covering affinity group and incentive group fares,<sup>6</sup> as well as the Resolution which established the group inclusive tour (GIT) fares for the period through March 31, 1970, despite the fact that many of the very issues which the Board agreed to consider in its further investigation of the bulk fares are equally applicable to these other group fares.

The Board's order largely ignored NACA's discrimination contentions. Thus, the Board did not mention NACA's argument that the affinity group fares are unjustly discriminatory because they are available only to members of certain types of organizations. It did find that the incentive group fares were discriminatory because of their availability solely to profit-making organizations. To meet this problem, the Board made its approval of the incentive fares subject to the condition that they be made available to any individual person or legal entity. (A. 262, 267) The Board failed, however, to deal with the discrimination issue which arises from the fact that the incentive fares are applicable only to groups traveling under an incentive program, and that groups traveling for any other purpose would be ineligible even if they meet all the other prescribed qualifications (such as number of passengers, time of travel, etc.) And the Board did not discuss at all NACA's claim that the tour basing feature of the bulk and GIT fares (i.e., that ground accommodations must be purchased as a condition to the availability of the air fare) rendered them unjustly discriminatory.

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<sup>6</sup>The Board's approval of the incentive group fares was made subject to the condition that the fares be made available to non-profit entities with incentive programs.

The Board acknowledged that the California proportional fares might be unjustly discriminatory or unduly preferential, and provided for the inclusion of this issue in its investigation of the bulk fares. (A. 258) However, the Board approved the same proportional fares insofar as they are applicable to the incentive and affinity group fares.<sup>7</sup>

The Board's Vice-Chairman Murphy and Member Minetti dissented from the Board's order, stating:

"Briefly, there is no economic justification for a 5 percent increase in the basic first class and economy round-trip fares. Raising normal fares, which apply to the majority of the transatlantic traffic, for the purpose of subsidizing expansion of promotional fares—particularly the contract bulk inclusive tour fares—does not constitute, in our view, sensible rate-making policy. Some of the promotional fares are perfectly proper; others, however, are clearly subject to the inference that they have been designed solely for anti-competitive purposes and that they are rested upon the 5 per cent increase." (A. 270).

A number of parties filed petitions for reconsideration of the Board's order, urging the Board to extend its approval of the bulk fares and the GIT fares through the Summer of 1970, on the ground that the packaged group tours to which such fares would apply are

<sup>7</sup>The Board agreed with NACA's contention that any tour operator using the new bulk fares would be indirectly engaging in air transportation, for which CAB authority is required. To remedy this problem, the Board announced it would institute a rule-making proceeding in the near future "with a view toward exempting bulk fare inclusive tour operators subject to appropriate conditions for protection of the public." (A. 259-60) (The Board has subsequently done so. Notice of Rule Making, SPDR-16, June 25, 1969, Docket 21120.) Lastly, the Board's order dismissed as moot, in view of its institution of an evidentiary investigation, NACA's pending petition for review of the Chief Examiner's ruling granting the motions to quash the NACA subpoenas.

customarily sold well in advance of the actual travel dates. On July 16, 1969, the Board issued an order in which it refused to extend its approval of the bulk fares, citing "the need to test the lawfulness of those fares before they come into general use during the peak season travel period when they could have a serious potential effect on the supplemental carriers." (A. 290, 292) But it granted approval of the Resolution establishing GIT fares for the period between April 1, 1970 and March 31, 1971.

## ARGUMENT

### I.

#### **THE BOARD ERRED BY REFUSING TO HOLD AN EVIDENTIARY HEARING ON THE ISSUES RAISED BY NACA BEFORE DECIDING WHETHER TO APPROVE THE IATA FARE RESOLUTIONS**

In the proceedings before the CAB, NACA twice requested the Board to hold an evidentiary hearing to determine whether the IATA Resolutions were adverse to the public interest and whether the group and bulk fares were unjustly discriminatory or unduly preferential. The first such request was made immediately after the Board issued its procedural order providing for the filing of written comments rather than a hearing. When the Board failed to act on that request, NACA complied with the Board's order by filing written "Objections and Complaint" against the IATA resolutions, but in that document NACA once again requested a full hearing, urging that the record before the Board was simply inadequate to enable it to make the determinations required by the statute.

The Board ultimately agreed that an evidentiary investigation was required, at least with respect to the Resolutions eliminating the round-trip discount on normal fares and adopting the bulk fares (and

accompanying California proportional fares).<sup>8</sup> But the Board nevertheless approved these fares for the period ending March 31, 1970. And it granted full approval, without any hearing at all, of the other fares which NACA had challenged.

We submit that NACA was entitled to a hearing on all of the fares in dispute, and that it was error for the Board to approve any of these fares without holding such a hearing. We do not contend, of course, that a hearing is required in every proceeding under Section 412. See *Fugazy Travel Bureau, Inc., v. CAB*, 121 U.S.App. D.C. 355, 350 F.2d 733 (1965). Rather, our position, which we elaborate below, is that the particular issues involved in this could only be resolved by an evidentiary hearing, and that the Board was therefore obliged to hold such a hearing before approving the fare agreements.

**A. The Issue of Unjust Discrimination and Undue Preference Could Only Be Resolved Through a Hearing**

NACA contended before the Board that the affinity and incentive group fares, the bulk and group inclusive tour fares, and the applicable California proportional fares were each unjustly discriminatory and/or unduly preferential and therefore unlawful under Section 404(b) of the Act. That section, which codifies the ancient principle that a common carrier must serve all members of the public equally, reads as follows:

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<sup>8</sup>The issues in the investigation, as stated in the Board's order, are "whether the following described agreements are adverse to the public interest or in violation of the Federal Aviation Act of 1958, and whether the fares, rules, conditions and provisions which are, or will be established pursuant to such agreements are or will be unjustly discriminatory or unduly preferential, or unduly prejudicial, and if such fares, rules, conditions, or provisions are found to be unjustly discriminatory, unduly preferential, or unduly prejudicial, to determine how such fares, rules, conditions or provisions should be altered, or what order should be made to remove such discrimination, preference to prejudice. . ." (A. 268).

"No air carrier or foreign air carrier shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality or description of traffic in air transportation in any respect whatsoever or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

This provision does not outlaw all preferences or discrimination in fares, but only *undue* preferences and *unjust* discrimination. Therefore, in every case in which a violation of Section 404(b) is claimed, the Board must first determine whether the alleged preference or discrimination exists and, if so, whether it is justified by the relevant circumstances.

In the present case, there can be no real doubt that the fares in issue are discriminatory. "Discrimination can exist in two forms: (1) by charging different rates to different passengers who are afforded the same or like service, or (2) by offering special services only to a select group of patrons." *Trailways of New England, Inc. v. CAB*, 412 F.2d 926, 933 n. 15 (1st Cir. 1969) (quoting 46 Tex. L. Rev. 254, 255 (1967)). Under this definition, each of the challenged fares is clearly discriminatory.

*Affinity Group Fares:* These fares offer a substantial discount to groups of persons who belong to "the same association, corporation, company or other legal entity . . . which shall have principal purposes, aims, and objectives other than travel." (A. 160) Any other group of the same size, receiving "the same or like service," would not be eligible for the discount and would have to pay a substantially higher fare. The Board has previously held affinity group fares to be discriminatory because of their "restrictive provisions with



respect to the groups who may obtain the discount." *Free and Reduced Transportation Case*, 14 C.A.B. 481, 489 (1951). Accord: *IATA Agreements, Group Excursion Fares*, 26 C.A.B. 755, 756 (1958). In 1962 and 1963, the Board held that such discrimination was justified by economic circumstances existing at that time, *IATA Group Fares Agreement*, 36 C.A.B. 33, 41 (1962); *IATA Agreements re Passenger Fares*, 38 C.A.B. 1062, 1073-74 (1963), but even those decisions did not deny that the fares were discriminatory.

*Incentive Group Fares:* These fares, even as modified by the Board's order (see p. 13 n. 6. *supra*), are available only to groups traveling under an incentive program "which rewards an employee for past work or provides an incentive for future activities. . ." (A. 166). Thus, for example, a corporation desiring to send a group of employees abroad for a business meeting could not use the incentive fares, even though the group met all other requirements of such fares (i.e., number of passengers, time of travel, etc.). Nor could a philanthropic organization use the fares to send a group of persons abroad for reasons unconnected with past or future work. The incentive fares are therefore discriminatory in much the same way as the affinity fares—their availability is restricted to certain narrowly defined groups.

*Bulk and GIT Fares:* These fares, while differing from each other in some respects, have one basic feature in common: they are both "tour basing fares"—i.e., they are available only to groups which have purchased an inclusive tour with a specified minimum expenditure for land accommodations. Thus, groups which meet all other requirements of these fares, but do not wish to purchase land accommodations of the type or in the amount required, cannot travel at these rates. For this reason, the Board, after a hearing, held such fares to be unjustly discriminatory in *Tour Basing Fares*, 14 C.A.B. 257, 259 (1951):



"In our opinion, the tour basing fares represent an objectionable form of discrimination in that they embody the essentials of a tie-in sale. The reduced-fare ticket can only be purchased if the passenger is willing to purchase hotel or other accommodations. Such discriminatory practices are a far cry from the equal treatment the public is normally entitled to expect from a public utility. Nothing in the promotional and competitive considerations advanced by the carriers is sufficient to justify such a discrimination."

See also *Pan American World Airways, et al. Agreements*, 18 C.A.B. 648, 649 (1954).<sup>9</sup>

*California Proportional Fares:* It is established that a fare is preferential and discriminatory if it requires passengers traveling a shorter distance to pay the same fare as passengers traveling a greater distance. *Hawaiian Common Fares Case*, 10 C.A.B. 921 (1949); *Northern Consolidated Airlines, Inc.* 33 C.A.B. 440 (1961). *A fortiori*, the California proportional fares in issue here are preferential and discriminatory, since they provide *lower* fares from certain California points to Europe than the fares applicable to points closer to Europe. For example, the \$130 Los Angeles proportional fare applicable to incentive groups and certain affinity groups can be

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<sup>9</sup>In 1967, the Board, without a hearing and without referring to the above cases at all, held that the IATA group inclusive tour fares were not unjustly discriminatory because they are "available to all persons" and have "no restrictions based upon the characteristics or status of the user, i.e., occupation, club membership, etc." *IATA Agreements, North Atlantic Fares*, Order E-24823 (March 6, 1967). The Board's decision in that case, however, ignored the discrimination problem raised by the tie-in feature of those fares. The Board has also approved tour basing fares, without discussion of the discrimination issue in *Continental Air Lines Tour Basing Fares*, Order E-25164 (May 18, 1967) and *IATA Agreements, North/Central Pacific Group Inclusive Tour Fares*, Order E-26089 (Dec. 8, 1967).

compared with the \$218 fare for Albuquerque, \$192 for Denver, \$220 for El Paso, \$146 for New Orleans, and \$134 for Kansas City. (A. 146, 147, 148, 150) Similar California proportional fares are provided for use in connection with the bulk fares (A. 183), and the Board has ordered an investigation to determine whether those fares are unjustly discriminatory or unduly preferential. However, it approved the affinity and incentive group fares (including the proportional fares applicable thereto), as well as the bulk fares (and applicable proportional fares) through March 31, 1970, without a hearing and without even mentioning the discrimination issues. We simply do not understand how the Board can approve a \$130 California proportional fare as applied to affinity and incentive group fares, while at the same time ordering an investigation of the identical proportional fare as applied to bulk fare travel after March 31, 1970.

Since, as we have seen, all the fares described above are discriminatory and/or preferential on their face, the Board had an obligation to decide whether the discrimination was "unjust" and the preference "undue". This determination was required not only under Section 412(b), which directs the Board to disapprove any agreement which is "in violation of this Act," but also under Section 1002(f), which requires the Board "upon complaint, or upon its own initiative" to eliminate any unjustly discriminatory or unduly preferential fare either by altering that fare or by ordering the carrier to discontinue it. NACA, it should be noted, not only objected to the IATA fare agreements, but specifically complained against them under Section 1002(f).

In determining whether a particular discriminatory or preferential fare is justified, the Board may consider only "those factors which Congress has by statute deemed material, and those factors which regulatory practice in the transportation industry has, through

experience, found relevant." *Transcontinental Bus System, Inc. v. C.A.B.*, 383 F.2d 466, 484 (5th Cir. 1967), *cert denied*, 390 U.S. 920 (1968). While the Board has some discretion to determine what weight to give to the relevant factors, the Act does not give the Board "license to resort to the full spectrum of broad social policy considerations which might rationally bear on the issue. . . ." *Ibid.* In particular, "neither the promotional aspect of a tariff nor the increased revenue produced by a tariff will justify an otherwise unjustly discriminatory tariff." *Id.* at 485.

In the present case, therefore, the mere fact that the fares in question are "promotional" fares or may produce added revenues for the IATA carriers does not justify their discriminatory aspects. Nor, in our view, are considerations of "international relations" relevant, since the anti-discrimination provisions of the Act are equally applicable to U.S. and foreign air carriers and to domestic and foreign air transportation. Sections 404(b), 1002(d), (f), 49 U.S.C. §§ 1374(b), 1482(d), (f).

Since the Board's order gives no reason why these discriminatory and preferential fares were approved, it is impossible to determine whether the Board's decision was based on proper or improper considerations. For this reason alone, the order must be set aside. "The unquestioned deference due the Board's expertise is not a substitute for an analysis which enables the court to understand, from what the Board sets forth in findings or otherwise, the basis for its ruling." *Retail Store Employees v. NLRB*, 124 U.S.App.D.C. 116, 360 F.2d 494, 496 (1965). See discussion, pp. 27-31, *infra*.

Moreover, once a fare has been shown to be discriminatory on its face, the burden shifts to the proponent of that fare to establish that it is justified, and this burden can usually be met only through an evidentiary hearing. This is the teaching of the two recent landmark judicial decisions dealing with this problem: *Trailways of New*

*England, Inc. v. CAB*, 412 F.2d 926 (1st Cir. 1969) and *Transcontinental Bus System, Inc. v. CAB*, 383 F.2d 466 (5th Cir. 1967), cert. denied, 390 U.S. 920 (1968). In each of those cases, the Board had dismissed without a hearing complaints filed against certain promotional fares (youth fares and family fares) which the courts found were discriminatory on their face. In each case, the court held that the Board erred in failing to hold an evidentiary investigation of the fares, and both courts set aside the Board's order and directed the Board to hold such an investigation.

The *Trailways* case is particularly relevant here, because one of the grounds which the Board advanced to justify the fares involved in that case was that they were needed to meet the competition of other forms of transportation. In the present case, it will undoubtedly be argued that the IATA group and bulk fares are justified by the need to compete with the charter services of the supplemental carriers. The First Circuit, however, held that this type of justification cannot be sustained unless it is supported by "substantial proof":

"Concededly, such competition is a legitimate matter for consideration. [Citations omitted] However, the mere mention or possibility of competition would seem meaningless without some factual determination of the actual competitive needs of the airlines industry as to surface carriers in general, and in particular, as to family fares. Courts have noted that because of the danger of a mere invocation of competition as justifying a rate discrimination, the agencies and courts must require substantial proof of the actual economic need for any particular discriminatory fare. [Citations omitted]" *Trailways of New England, Inc. v. CAB, supra*, 412 F.2d at 934.

Obviously, there is no "substantial proof of the actual economic need" for the discriminatory fares involved in this case. Indeed, there is no proof at all (in the sense of sworn testimony tested by cross-examination), since the Board denied NACA's request for an evidentiary hearing.

As the *Trailways* and *Transcontinental Bus* cases demonstrate, the Board in recent years has taken rather lightly its duty to enforce the anti-discrimination provisions of the Act. The present case may well represent the high water mark of this attitude. For, as we have seen, the Board has approved fares which are clearly discriminatory and preferential on their face without even giving any explanation or reason for its decision. We submit that this Court, like the First and Fifth Circuits in the cases cited above, should set aside the Board's order and remand the case for hearing to determine whether the fares in question are unjustly discriminatory or unduly preferential within the meaning of the Act.

**B. The "Public Interest" Issues Raised by NACA Required an Evidentiary Hearing**

Unjust discrimination was, of course, only one of several grounds on which NACA urged the Board to disapprove the Resolutions. NACA's other contentions all went to the question whether the Resolutions were "adverse to the public interest" within the meaning of Section 412(b). These contentions can be briefly summarized as follows:

(1) Elimination of the round-trip discount is not economically justified and constitutes an effort by the scheduled carriers to exercise their monopoly power over fares in the individually-ticketed market to subsidize unreasonably low fares in the group travel market, where the scheduled carriers compete with the supplementals.

(2) Under the standards normally applied in rate-making proceedings, the bulk, affinity group and incentive group fares are unreasonably low.<sup>10</sup>

(3) The challenged bulk and group fares will cause serious diversion of traffic from charter to scheduled services, thereby severely injuring the supplemental carriers and impairing their ability to provide needed service to the public.

As we shall now show, NACA was entitled to a hearing on these issues as well.

In the first place, it should be emphasized that since the IATA Resolutions are price-fixing agreements, they constitute a plain violation to the antitrust laws. See, e.g., *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150 (1940). Moreover, the fare agreements violate the antitrust laws in still another way, since it is a violation for a corporation—even more so for many corporations in concert, as here—to raise prices in a monopoly market in order to subsidize lower prices in a competitive market. See *United States v. Grinnell*, 384 U.S. 563, 570 (1966); *Moore v. Mead's Fine Bread Co.*, 348 U.S. 115 (1954); *United States v. New York Great A&P Tea Co.*, 173 F.2d 79, 87 (7th Cir. 1949).

Under the Board's own precedents, when an agreement violates the antitrust laws, the burden is on the proponent of the agreement

<sup>10</sup>We recognize that the Board's authority to fix reasonable fares does not extend to foreign air transportation. Compare subsections (d) and (f) of Section 1002, 49 U.S.C. § 1482. However, Section 102 of the Act, which defines "the public interest," includes as one element thereof "the promotion of adequate, economical and efficient service at reasonable charges. . . ." 49 U.S.C. § 1302(c) (Emphasis added). Thus, the reasonableness *vel non* of fares established by agreement among competing carriers is clearly a "public interest" factor to be considered by the Board in making its Section 412 determination. See *IATA Traffic Conference Resolution*, 6 C.A.B. 639, 645-46 (1946); *IATA Group Fares Agreement*, 36 C.A.B. 33, 41-42 (1962).



to prove that it is neither unlawful under the Act nor adverse to the public interest:

"Where [a Section 412] agreement has among its significant aspects elements which are plainly repugnant to established antitrust principles, approval should not be granted unless there is a clear showing that the agreement is required by a serious transportation need, or in order to secure important public benefits." *Local Carriage Agreement Case*, 15 C.A.B. 850, 852-53 (1952).

The Board has consistently followed this principle in the past and has, indeed, applied it to other IATA agreements. For example, in *IATA Credit Agreements*, 30 C.A.B. 1553, 1555 (1960), the Board disapproved the agreements there involved, stating:

"Since these agreements violate the antitrust laws, they should not be approved *unless their proponents have made a clear showing of the need for approval to fill serious transportation need or secure important public benefits*. No such showing has been made, nor do we otherwise know of any." (Emphasis added).

See also *VOLUMAIR Agreement*, 30 C.A.B. 1007 (1960).

Board approval of the agreements under Section 412(b), of course, immunizes the IATA carriers against antitrust liability. Section 414 of the Act, 49 U.S.C. § 1384. But it is precisely because Board sanction has this effect, and because the IATA carriers bore the burden of showing affirmatively that overriding public benefits justified their violation of the antitrust laws, that NACA should have been given a hearing before the agreements were approved.

In *Fugazy Travel Bureau, Inc. v. CAB*, 121 U.S.App.D.C. 355, 350 F.2d 733 (1965), this Court indicated that the question whether a party is entitled to a hearing in a Section 412 proceeding depends



upon whether that party "will be adversely affected in a legal or property right." 350 F.2d at 738. In this case, it is clear that Board approval of the IATA agreements does adversely affect the legal rights of the NACA carriers—namely, their right to bring suit under the antitrust laws. See 15 U.S.C. §§ 15, 26. In an antitrust action, the plaintiffs would, of course, be entitled to a full judicial hearing. The CAB cannot, we submit, deprive the supplemental carriers of substantial legal rights under the antitrust laws, including a claim for treble damages, without any hearing at all. As a matter of simple due process, the supplementals are entitled to *some* hearing in *some* forum before their rights under the antitrust laws can be extinguished.

A hearing was particularly essential in this case because the issues which NACA raised were the kind of issues which can only be resolved on the basis of a full evidentiary record. As stated by Professor Kenneth Culp Davis, "a party who has a sufficient interest or right at stake in a determination of governmental action should be entitled to know and to meet, with the weapons of rebuttal evidence, cross-examination, and argument, unfavorable evidence of adjudicative facts, except in the rare circumstances when some other interest, such as national security, justifies an overriding of the interest in a fair hearing." Davis, *The Requirement of a Trial-Type Hearing*, 70 Harv. L. Rev. 193, 199 (1956). Davis defines "adjudicative facts" as "facts about the parties and their activities, businesses, and properties, usually answering the questions of who did what, where, when, how, why, with what motive and intent. . . ." *Ibid.* In the present case, the issues presented required the Board to decide such questions of "adjudicative fact" as the following:

- Is an increase in normal fares justified by increased costs, decreased load factors, or other economic circumstances?
- Is there factual support for the contention of the IATA carriers that the increase in normal fares would

be "offset" by extensions of certain "excursion fares" and "individual inclusive tour fares" to days of the week and periods of the year when they were not previously available?

- Was the adoption of low group and bulk fares intended to injure the supplementals?
- What would be the effect of the group and bulk fares on the charter business of the supplemental carriers?
- Would the group and bulk fares cover the carriers' costs of service?

The Board itself recognized that these issues were both pertinent and substantial, and that they could only be decided on the basis of an evidentiary hearing. It was for this reason that the Board ordered a hearing on the increase in normal fares and adoption of the bulk fares for the period after March 31, 1970. Clearly, then, the Board erred in granting final approval of those same fares for the pre-March 31 period without hearing, and in approving without any hearing at all the other group fares which NACA challenged.

## II.

### **THE BOARD FAILED TO GIVE REASONS OR MAKE FINDINGS WHICH WOULD JUSTIFY ITS APPROVAL OF THE FARE RESOLUTIONS OPPOSED BY NACA**

As discussed above, NACA raised a number of basic objections to fares adopted in the IATA Resolutions. Apart from the question whether a hearing was required on these objections, it is certainly clear that the Board had an obligation to deal with them, and to make findings and give reasons in support of its decision. This it utterly failed to do.

The obligation of an administrative agency to justify its decisions with findings supported by the record and reasons supported by the law is, of course, well established:

"There are no findings and no analysis here to justify the choice made, no indication of the basis on which the Commission exercised its expert discretion. We are not prepared to and the Administrative Procedure Act will not permit us to accept such adjudicatory practice." *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 167 (1962).

"Two strands of doctrine apply to the judicial review of agency determinations. First is the principle that an agency or commission must articulate with clarity and precision its findings and reasons for its decisions." *WALT Radio v. FCC*, D.C. Cir. No. 21, 689, slip opinion at 5, June 24, 1969.

In the present case, as shown above, the Board was confronted with fare agreements which (a) violated the antitrust laws and (b) established a number of fares which are on their face discriminatory. In these circumstances, the agreements and fares could only be approved if the Board could find, on the evidence before it, that:

(1) The agreements are "required by a serious transportation need, or in order to secure important public benefits." *Local Cartage Agreement Case*, 15 C.A.B. 850, 852-53 (1952); *IATA Credit Agreements*, 30 C.A.B. 1553, 1555 (1960).

(2) The discriminatory and preferential fares are "justified in terms of established Board precedent and policy and the relevant facts." *Trailways of New England v. CAB*, 412 F.2d 926, 932 (1st Cir. 1969). See also *Transcontinental Bus System v. CAB*, 383 F.2d 466 (5th Cir. 1967), *cert. denied*, 390 U.S. 920 (1968).

Not only did the Board fail to make any such findings, but it failed even to acknowledge the existence of these issues. Indeed, the Board's order contains virtually no discussion (other than a brief factual description) of the affinity group, incentive group or GIT fares, all of which NACA challenged. And the Board's discussion of the normal fare increases and the bulk fares consisted largely of an explanation why NACA's contentions were sufficiently substantial to warrant a hearing.

The Board did offer some reasons for its decision to approve the increased normal fares and the new bulk fares for the period expiring on March 31, 1970. With respect to the normal fares, the Board referred to "estimates" of TWA and Pan American indicating that the increases in these fares would be offset by greater use of the expanded excursion and individual inclusive tour fares. In addition, the Board referred to the downward trend of Pan American's rate of return.<sup>11</sup> But the Board made no *finding* that the increased normal fares would *in fact* be offset, or that the increases were *in fact* justified by increasing costs or decreasing profits. On the contrary, the Board ordered a hearing precisely because it was unable to make any finding on these issues on the basis of the incomplete evidence before it.

Similarly, with respect to the bulk fares, the Board stated that "lower tour prices made possible by the lower air fares should enable many persons to travel by air who would not otherwise be able to use air transportation. . . ." But the Board made no *finding* that the fares would in fact generate new traffic—rather than, for example,

<sup>11</sup> It should be noted that if the increases in normal fares are indeed offset by greater use of the excursion and individual inclusive tour fares, then those increases presumably would not improve Pan American's rate of return. Moreover, as the Board also noted (A. 257), TWA is already enjoying a very handsome 14.5% rate of return, which suggests that Pan American's problems may be attribute to factors other than inadequate fares.

merely divert traffic from the supplemental carriers' charter services. Indeed, in its order on reconsideration the Board emphasized the "need to test the lawfulness of these fares before they come into general use during the peak season travel period when they could have a serious potential effect on the supplemental carriers." (A. 292). Nor did the Board make any findings with respect to NACA's contention that the bulk fares are unjustly discriminatory—it merely included that issue as one to be considered in the forthcoming evidentiary investigation.

The Board's treatment of the normal fare increases and the adoption of the bulk fares seems to have been based on the premise that the burden of proof under Section 412 is on the opponent, rather than the proponent, of the agreement. Thus, while the Board acknowledged that there were serious questions as to whether these fares were lawful or in the public interest, it nevertheless approved them for a limited period. The fact is, however, that an agreement which violates the antitrust laws is, as we have seen, presumptively adverse to the public interest, and the burden falls on the proponent of the agreement to make "a clear showing of the need for approval to fill serious transportation need or secure important public benefits." *IATA Credit Agreements*, 30 C.A.B. 1553, 1555 (1960). Similarly, once a fare is shown to be discriminatory on its face—as is true of the bulk and group fares in issue here—the burden shifts to the proponent of the fare to prove that the discrimination is justified. *Trailways of New England, Inc. v. CAB supra*, 412 F.2d at 932.

Even assuming *arguendo* that the Board gave adequate reasons to justify its approval of the Resolutions eliminating the round-trip discount and adopting the bulk fares for a limited period, having ordered a hearing as to any further period, the fact remains that it gave no reasons at all for its final approval of the other challenged

fare agreements. NACA's challenges to the affinity group fares and the GIT fares were entirely ignored, and the only aspect of the incentive group fares which the Board discussed was their limited availability to profit-making organizations. The Board ignored the plain fact that the incentive fares, even if extended to non-profit organizations, are discriminatory in that their availability is restricted to groups traveling under a so-called "incentive" program. And the Board also ignored NACA's contention that the affinity and incentive group fares (as well as the bulk fares) were unreasonably low, would result in serious competitive injury to the supplementals and were therefore adverse to the public interest. In light of the Board's utter failure to come to grips with these issues, to make any finding that these fares were required to fill a "serious transportation need or secure important public benefits," or to give any reason why the discriminatory aspects of these fares were justified, its approval of these fares clearly cannot stand.

#### CONCLUSION

For the reasons stated above, the orders under review should be set aside and the case remanded to the Board.

Respectfully submitted,

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August, 1969.



## APPENDIX

## PERTINENT PROVISIONS OF THE FEDERAL AVIATION ACT OF 1958

*Section 102, 49 U.S.C. § 1302:* In the exercise and performance of its powers and duties under this Act, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(e) The promotion of safety in air commerce; and

(f) The promotion, encouragement, and development of civil aeronautics.

*Section 404(b), 49 U.S.C. § 1374(b):* No air carrier or foreign air carrier shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or descrip-



tion of traffic in air transportation in any respect whatsoever or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

*Section 412, 49 U.S.C. § 1382:* (a) Every air carrier shall file with the Board a true copy, or, if oral, a true and complete memorandum, of every contract or agreement (whether enforceable by provisions for liquidated damages, penalties, bonds, or otherwise) affecting air transportation and in force on the effective date of this section or hereafter entered into, or any modification or cancellation thereof, between such air carrier and any other air carrier, foreign air carrier, or other carrier for pooling or apportioning earnings, losses, traffic, service, or equipment, or relating to the establishment of transportation rates, fares, charges, or classifications, or for preserving and improving safety, economy, and efficiency of operation, or for controlling, regulating, preventing, or otherwise eliminating destructive, oppressive, or wasteful competition, or for regulating stops, schedules, and character of service, or for other cooperative working arrangements.

(b) The Board shall by order disapprove any such contract or agreement, whether or not previously approved by it, that it finds to be adverse to the public interest, or in violation of this Act, and shall by order approve any such contract or agreement, or any modification or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this Act; except that the Board may not approve any contract or agreement between an air carrier not directly engaged in the operation of aircraft in air transportation and a common carrier subject to the Interstate Commerce Act, as amended, governing the compensation to be received by such common carrier for transportation services performed by it.

*Section 414, 40 U.S. C. § 1384:* Any person affected by any order made under section 408, 409, or 412 of this Act shall be, and is hereby, relieved from the operations of the "antitrust laws", as designated in Section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, and of all other restraints or prohibitions made by, or imposed under, authority of law, insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order.

*Section 1002(f), 49 U.S.C. § 1482(f):* Whenever, after notice and hearing, upon complaint, or upon its own initiative, the Board shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected, or received by any air carrier or foreign air carrier for foreign air transportation, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, is or will be unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Board may alter the same to the extent necessary to correct such discrimination, preference, or prejudice and make an order that the air carrier or foreign air carrier shall discontinue demanding, charging, collecting, or receiving any such discriminatory, preferential, or prejudicial rate, fare, or charge or enforcing any such discriminatory, preferential, or prejudicial classification, rule, regulation, or practice.



**BRIEF FOR RESPONDENT**

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**No. 23,012**

**NATIONAL AIR CARRIER ASSOCIATION  
AMERICAN FLYERS AIRLINE CORPORATION  
CAPITOL INTERNATIONAL AIRWAYS, INC.  
OVERSEAS NATIONAL AIRWAYS, INC.  
SATURN AIRWAYS, INC.  
TRANS INTERNATIONAL AIRLINES, INC.  
WORLD AIRWAYS, INC.,**

**Petitioners,**

**v.**

**CIVIL AERONAUTICS BOARD,**

**Respondent,**

**PAN AMERICAN WORLD AIRWAYS, INC., ET AL.**

**Intervenors.**

**ON PETITION FOR REVIEW OF ORDERS OF THE  
CIVIL AERONAUTICS BOARD**

**RICHARD W. McLAREN  
Assistant Attorney General**

**United States Court of Appeals**

**for the District of Columbia Circuit**

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**FILED**

**NOV 7 1969**

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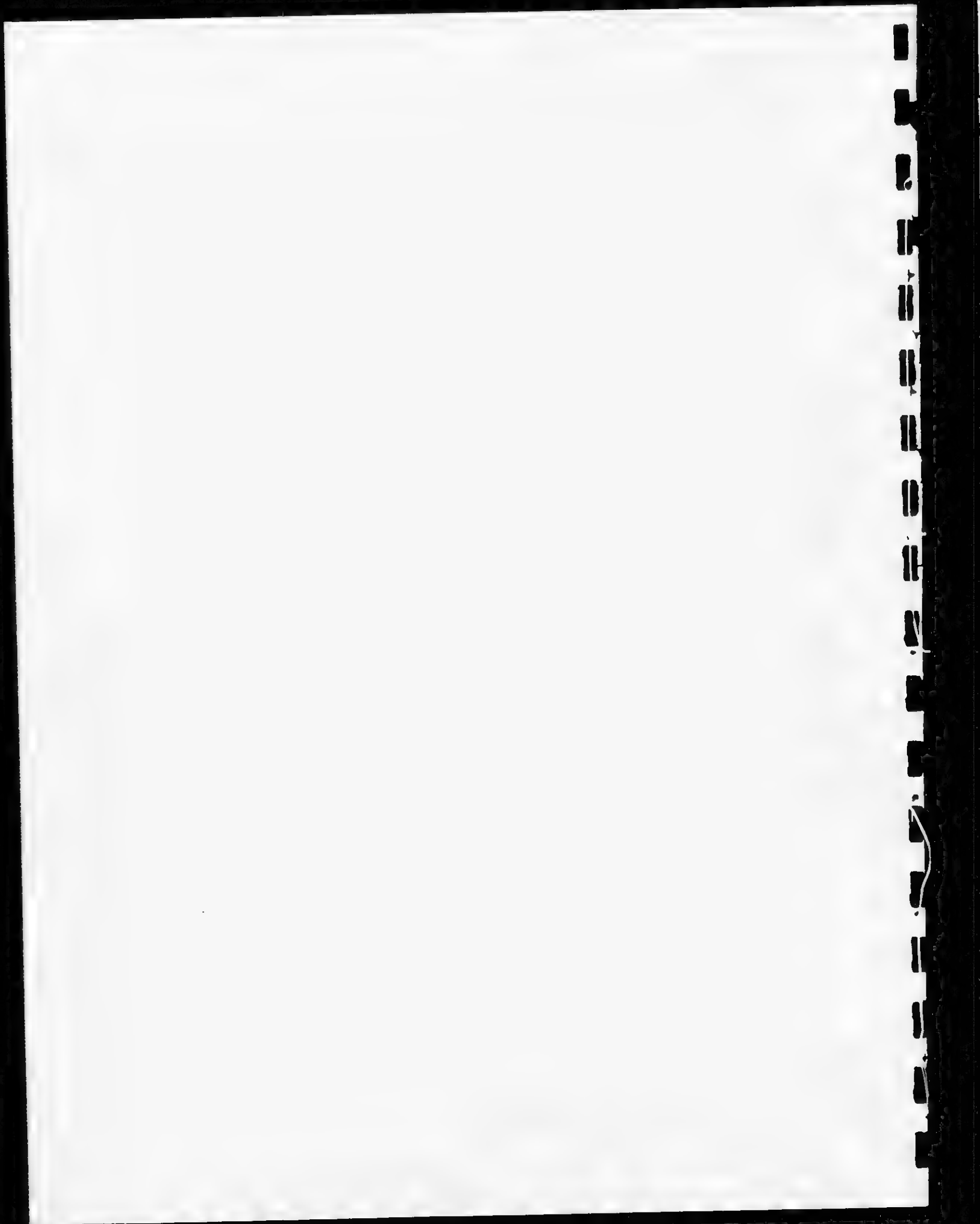


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No. 23,012

v.

ON PETITION FOR REVIEW OF ORDERS  
OF THE CIVIL AERONAUTICS BOARD

## BRIEF FOR RESPONDENT

1. Whether the Civil Aeronautics Board abused its discretion in approving, pending an evidentiary investigation, various inter-carrier agreements establishing fares for scheduled transatlantic service, notwithstanding that (1) the statute required no hearing; (2) substantial public interest considerations pointed to approval; and (3) the agreements on their face appeared to be justified by legitimate competitive and other economic considerations and, in large measure, involved fares whose basic elements had long been a familiar part of the fare structure.

2. Whether the Board's disposition of the agreements is supported by adequate findings (a contention not raised below), particularly in light of the fact that the questions allegedly unanswered were fully explored and answered in earlier Board orders approving similar agreements in the face of the same objections by the same complainants.

This case has not previously been before the Court save for a motion for stay pending judicial review which was denied on June 12, 1969.

#### SUMMARY STATEMENT OF THE CASE

This case comes before the Court on a petition for review of two orders of the Civil Aeronautics Board (Orders 69-4-138 (A 254) and 69-7-81 (A 141)). The petitioners are six supplemental air carriers--carriers holding certificates of public convenience and necessity authorizing charter service, but not regular, scheduled, individually-ticketed service-- and their trade association, the National Air Carrier Association (NACA). By the challenged orders, the Board approved, under §442 of the Federal Aviation Act (49 U.S.C. 1322; *infra*, p. 10), agreements among various U.S. and foreign air carriers providing for changes in existing fares for scheduled transatlantic passenger service, and introducing new promotional fares (all to be implemented through tariffs thereafter to be filed with the Board). The details of the agreements will be set forth subsequently. We believe, however, that it will be helpful to resolution of the issues presented to explain first the manner

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<sup>1/</sup> See Association of Airlines v. Civil Aeronautics Board, 121 U.S. App. D.C. 120, 342 F.2d 349 (1965); Association of Airlines v. Civil Aeronautics Board, 129 U.S. App. D.C. 6, 365 F.2d 939 (1966).

in which fares for scheduled transportation are fixed and the competitive relationship between the petitioners and the scheduled transatlantic carriers.

Where operations only between points in United States territory are involved (i.e., "domestic operations"), this nation is free to fix the fares to be charged for the services and to require them to be placed into effect. Consequently, the Congress by §1002(d) of the Federal Aviation Act (49 U.S.C. 1482(d), infra, p. 51) conferred full and traditional rate-making powers on the Board. Not only may the Board fix the level of rates after evidentiary proceedings, but it also may suspend a tariff containing a proposed rate change for a period of up to 180 days, pending a determination of its lawfulness.

The situation is entirely different where international rates are concerned. In such cases there are at least two jurisdictions involved with respect to each fare, i.e., the United States and the foreign nation to which the traffic is destined or at which it originates. Consequently, any rate-fixing authority of one nation necessarily can be exercised only with the acquiescence of the other nation. In recognition of these principles, the 1938 Civil Aeronautics Act withheld from the Board rate-making powers in the international field comparable to those conferred domestically. The Board cannot directly fix the level of international fares in terms of

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<sup>2/</sup> The 1938 Act directed the Board to conduct a study and make recommendations to the Congress concerning the desirability of full rate-making authority in the international field. Although the Board from time to time has requested such powers (with full knowledge that it could not unilaterally effectuate its determinations), the Congress consistently has declined to grant that authority.

2. Whether the Board's disposition of the agreements is supported by adequate findings (a contention not raised below), particularly in light of the fact that the questions allegedly unanswered were fully explored and answered in earlier Board orders approving similar agreements in the face of the same objections by the same complainants.

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<sup>2/</sup> See American Airlines v. Civil Aeronautics Board, 121 U.S. App. D.C. 120, 342 F.2d 349 (1965); American Airlines v. Civil Aeronautics Board, 125 U.S. App. D.C. 6, 365 F.2d 939 (1966).

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business or reasonableness of rates, nor can it suspend an international tariff for any purpose. Rather, its only direct power with respect to fares in foreign air transportation is, after notice and hearing, to alter them "to the extent necessary to correct" discrimination, and to "make an order that the air carrier or foreign air carrier shall discontinue demanding, charging, collecting, or receiving" a discriminatory fare (14002 f . 19 U.S.C. 1462(f), *infra*, p. 52).

These circumstances and considerations led to the Board's approval of the IATA traffic conference resolution in 1946. IATA Traffic Conference Resolution, c C.A.B. 639. IATA (International Air Transport Association) is a trade association of scheduled U.S. and foreign air carriers engaged in <sup>3/</sup> scheduled international air transportation. The resolution approved in 1946 provides for "traffic conferences" pursuant to which the carriers take joint or coordinated action dealing with industry-wide matters, including fares for the scheduled services. The Board approved the conference procedure itself in 1946, but required that all agreements ("resolutions" arrived at through the conference system be presented to the Board for approval under §412.

It is pursuant to the machinery established by that resolution that fares for scheduled international air transportation are established

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<sup>3/</sup> As NACA points out, virtually all of the airlines, domestic and foreign, engaged in scheduled transatlantic service are members of IATA.

today.<sup>4/</sup> It provides for consultation and agreement between U.S. and foreign air carriers on rates and fares and related matters and embodies the so-called conference method of rate making which was familiar in the shipping industry at the time of enactment of the Civil Aeronautics Act in 1938. The agreements specify the fares to be charged for limited periods of time, usually two years, and are subject to the approval of the governments of the carriers involved. This nation's approval of the agreements is granted under §412 of the Federal Aviation Act and such approval carries with it immunity from the anti-trust laws pursuant to §414 of the Act (49 U.S.C. 1384, infra p. 50 ). The rates contemplated by the agreements are then embodied in tariffs which are filed with the Board (see Section 403, infra, p. 47 ).

There are three general categories of air carriers that conduct operations across the North Atlantic. These are the scheduled carriers (both United States and foreign ones such as Pan American, TWA, Air France, BOAC, KLM, etc.); the six United States supplemental or charter air carriers who are the petitioners here; and several foreign air carriers authorized to engage in charter operations only ("foreign charter" or "foreign supplemental" carriers). Both the United States and the foreign supplemental

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<sup>4/</sup> While there are various IATA resolutions which specify the types of charters which the scheduled carriers may conduct, the level of charter rates is not fixed by IATA for either the scheduled or supplemental carriers.

carriers are restricted to charter services.<sup>5/</sup> On the other hand, the United States and foreign regular route carriers (the IATA carriers) may engage in both regularly scheduled services and charter operations.<sup>6/</sup>

Thus, the supplemental carriers and their foreign counterparts are engaged in direct charter competition with the IATA carriers. They also compete with the IATA carriers for that part of the transatlantic passenger traffic which might otherwise travel on scheduled flights and which could legitimately be attracted to their charter services. Conversely, those who might otherwise travel on the supplementals' charters are part of a general pool of traffic which the IATA carriers legitimately seek to attract to their scheduled operations. Moreover, the competition is not merely theoretical or nominal, nor have the supplementals been overwhelmed by the IATA carriers. Quite the contrary. As more fully detailed in the

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5/ The United States supplementals (and in varying degrees their foreign counterparts, may engage in three types of charters: (1) pro rata; (2) single-entity; and (3) inclusive tour. A pro rata charter involves the transportation of a group of persons having some prior affinity or community of interest such as, for example, members of a fraternal organization. The organization contracts with the carrier for the transportation, and each member of the traveling group pays to the charterer his proportionate share of the charter price. The supplementals may contract with as many as three separate charterers for a single flight and carry three groups (consisting of a minimum of 40 persons each) on that flight (this is known as a split charter).

A single-entity charter involves the engagement of the aircraft by a person who bears the entire cost for the transportation of the passengers. A common example is the engagement of an aircraft by a business concern to transport on vacation employees who have earned some special reward for their services.

Inclusive tour charters involve the engagement of the aircraft by a tour operator who sells to the general public a package which includes air carriage, ground accommodations, sightseeing, etc. See American Airlines v. Civil Aeronautics Board, supra, 365 F.2d 939.

6/ By reason of IATA resolutions and Board regulations, however, the IATA carriers' charter operations are generally restricted to single entity and pro rata charters.

margin and documented in Appendix B, the supplementals have become increasingly strong competitors in the past five years and, in general, the losers in the competitive struggle have been the IATA carriers, particularly the foreign flag lines.<sup>7/</sup>

Moreover, a common problem which has historically plagued the IATA carriers, particularly during certain seasons, has been the operation of

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<sup>7/</sup> In the past six years, the period during which the supplemental carriers started operating certificated services, the size and character of the transatlantic passenger market has changed. The tables set forth in Appendix B, which are derived from official reports by the carriers to the Board, disclose a number of highly significant facts with respect to the transatlantic passenger market and the competitive relationship of the carriers engaged in transatlantic service. The total passenger market has grown steadily. However, there has been a gradual decline in the share of the passengers using scheduled services. In 1963, 86% of the total transatlantic air passengers used scheduled services compared with 83% in 1968. Conversely, those using charter services increased from 13.7% of the total in 1963 to 16.8% in 1968.

Moreover, Table II indicates that the increase in the charter services' share of the market is largely attributable to the supplemental type carriers, both U.S. and foreign, inasmuch as their share increased from 1.4% in 1963 to 9.5% in 1968. Indeed, NACA itself has projected in the instant proceeding that the U.S. supplementals alone will capture 10.5 percent of the total market in 1969. At the same time the share of the total market of the route carriers' charters declined from 12.3% in 1963 to 7.3% in 1968.

Several other significant facts are disclosed by Table II. The U.S. supplementals have been the principal beneficiaries of the increase in the growth of the charter services' share of the total market. Moreover, while the charter services have made significant inroads on scheduled services, the foreign flag carriers' scheduled services have suffered the greatest impact. In 1963 the U.S. flag scheduled service accounted for 36% of the total market and the figure was about the same for 1968. At the same time the share of the market for the foreign flag carriers' service declined from 50.3% in 1963 to 46.8% in 1968.

charter services while their regular scheduled flights have been operated with a substantial number of empty seats. See IATA Group Fares Agreement, 30 C.A.B. 33, 38 (1961). As Pan American pointed out in the instant case, "it is obvious that a substantial economic waste is involved in the operation of full plane-load charters by IATA carriers while at the same time their scheduled flights are flying with substantial empty seats. To the extent we can divert passengers from charter to scheduled services, which we estimate is probably up to 25% of our charter traffic during nine months of the year, we can eliminate extra expenses involved in operating charter aircraft and carry the additional traffic at relatively small extra cost in existing scheduled services" (A. 17-48).

In view of these considerations, and to generate traffic, as well as to make transatlantic air travel more widely available, the IATA carriers have, with Board approval, over the years introduced a wide range of promotional fares which offered substantial savings over the normal individual fares. These have included 14/21 day excursion fares and individual inclusive tour fares, all of which involve individual travel, and various group fares. Among the latter were (1) affinity group fares which are available to groups of persons belonging to organizations which exist for purposes other than travel, and (2) group inclusive tour (GIT) fares which are available to 15 or more persons purchasing package tours which include ground accommodations and sightseeing. These fares, however, have always been somewhat higher than the supplementals' charter fares. See Transatlantic Charter Investigation, 40 C.A.B. 233 (1964).

Against this background, we come to the agreements challenged by NACA and its members. To a large extent they involved revisions and modifications in the rules and levels of existing types of fares. More specifically, the GIT fares were to be increased by \$8.00, so that the round-trip New York-London fare per person would be \$280.00 in the peak season (April through October) and \$238.00 during the remainder of the year (the "off" season).<sup>8/</sup>

Also involved were changes in the existing affinity group fares. The details of the changes are complicated and are set forth in the margin.<sup>9/</sup> In general it will suffice to state that they resulted in a

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<sup>8/</sup> In addition, the minimum tour price was increased and various of the tour provisions were tightened.

<sup>9/</sup> Under the existing tariffs, the affinity group fares were available during the peak season (April through October to the following minimum-sized groups at the following levels (New York-London round-trip):

15 (westbound) or more - \$275.00

25 (eastbound) or more - \$300.00

50 or more - \$245.00

During the rest of the year, the level was \$267 for minimum-sized groups of 15 or more westbound and 25 or more eastbound. There was no fare during this period for larger minimum-sized groups.

Under the challenged agreement, no changes were made in the fare levels for minimum-sized groups of 15 or 25. However, the existing April-October peak season was restructured into a peak season consisting of ten weeks eastbound and three months westbound, and a so-called "shoulder" period consisting of the remainder of the former seven-month peak season. During the new peak season the roundtrip fare for minimum-sized groups of 50 or more was increased by \$5.00 to \$250. During the "shoulder" period the minimum size of this group was reduced to 40 and the New York-London round-trip fare was set at \$212. The other change was to make affinity group fares available during the off season to minimum-sized groups of 40. The fare was set at \$200.00.

fare ranging from a minimum of \$200.00 (New York-London round-trip) to \$300.00, depending upon the size of the group and the period of the year in which it travelled.

In addition to the foregoing changes in the GIT and affinity group fares, the challenged resolutions introduced into the fare structure two new promotional fares. One, the incentive group fare, while new <sup>10/</sup> did not differ essentially from affinity group fares. Like the affinity group fares available during the same periods of the year, the fares range from \$200.00 to \$212.00 New York-London round-trip.

By far the most controversial agreements were those establishing a new promotional fare and changing the fare for normal individual travel. The former established CBIT (contract bulk inclusive tour) fares. The CBIT fare involves the sale of blocks of seats to a tour operator (a minimum of 40 seats eastbound and 20 westbound) at a bulk fare price for use by the tour operator in connection with the sale of 14-21-day inclusive tours. (A. 169-70, 172 ). The fare includes a minimum tour price per person for land arrangements (A. 169-70 ). The CBIT fare level hinges on the season in which the travel takes place. The air fare ranges from \$220 (New York-London roundtrip) during the peak season, to \$175 during

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<sup>10/</sup> The fare is available to groups of persons (a minimum of 40 eastbound and 20 westbound, who are employees, dealers and/or agents of a profit-making organization and are traveling under an established "incentive travel program." (A. 166-67 ). The cost of the program must be borne entirely by the sponsoring organization and must include tour features such as accommodations, sightseeing, and entertainment during a 6-14 day validity period. It is available only during the shoulder and off seasons.



11/  
the off season.

The last of the challenged agreements related to the fares charged to individually-ticketed passengers traveling first or economy class. The agreement provided for elimination of the five percent discount previously available to those purchasing a round-trip ticket, and maintenance of existing one-way fares. ( A. 198 ). As a result, the first class round-trip New York-London fare is \$712.50 and, in economy class, 12/ \$420.

It is obviously impossible to set forth completely the relationship of the fares embodied in the resolutions to the charter fares of the supplementals, particularly because the latter vary, sometimes almost from day to day. An illustration will nevertheless help. World Airways, one of the petitioning carriers, had on file with the Board a pro rata charter tariff, effective July 15, 1969 under which a round-trip New York-

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11/ Also pertinent to the CBIT, affinity group, and incentive group fare resolutions was one changing the so-called proportional fares. These are specified amounts added to the fare from New York for purposes of computing the fare from other points in the United States. The agreement reduced the proportional fares from various California points, but left the proportional fares from other U.S. points largely undisturbed. ( A. 133-37 ).

12/ Not challenged, but of significance in the Board's disposition of the agreements, are the changes in the 14-21 day excursion fares and individual inclusive tour fares. As previously indicated, they are available to individuals and have become a standard element in the trans-atlantic fare structure. Previously, however, they have been unavailable in the peak season and on weekends. They were extended to year-round application so as to include both the peak season (accompanied by a fare increase) and weekend travel (involving a surcharge). ( A. 154-56 ). Under the changes, the New York-London round-trip fares would range from \$320 to \$380.

London passenger would pay from \$162.00 to \$196.80, depending upon the seating configuration of the aircraft. By contrast, the lowest IATA group fares during the peak season (which includes July 15) would be (under the challenged resolutions) as follows:

Group Inclusive Tour:	\$288.00
Affinity Group Fares:	\$250.00
CBIT Fares	\$220.00

Thus, the spread in favor of the supplemental carrier ranges from \$89.20 to \$21.20. Moreover, it must be borne in mind that the GIT resolution requires that the minimum price for land arrangements be \$70.00, and under the CBIT resolution, \$101.00.

As previously indicated, the agreements were filed with the Board, pursuant to §112 of the Act. That section requires in pertinent part that every air carrier file with the Board "every contract or agreement . . . between such air carrier and any other air carrier, foreign air carrier, or other carrier . . . relating to the establishment of transportation rates, fares, charges or classifications . . ." It also provides that the Board "shall by order approve any such contract or agreement . . . that it does not find to be adverse to the public interest, or in violation of this Act . . ." Conversely, it directs the Board to disapprove an agreement "that it finds to be in adverse to the public interest or in violation of this Act . . ."

Over the years, the supplementals have regularly insisted that the Board must disapprove IATA agreements relating to group or changing promotional

fares. They have repeatedly argued that the agreements are in reality simply a predatory competitive scheme utilizing unreasonably low and unjustly discriminatory fares to divert traffic from their charter services, and the Board has heretofore rejected their contentions. (See infra, p. 39 ). True to form, when the instant agreements were filed (on February 26, 1969), NACA promptly advised the Board that it intended to challenge them on the familiar grounds. In view of this and because, with a few exceptions, they were scheduled for effectiveness on May 1, 1969. A. 10, <sup>13/</sup> the Board issued an order three days later establishing dates for the receipt of comments. <sup>14/</sup> It stated that its intention was "not only to insure a full record, but to expedite its consideration of that record to the end that the Board will be in a position to act on the agreements as far in advance of the intended effective date as possible." ( A. 11 ).

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<sup>13/</sup> The existing fares were scheduled to expire on March 31, 1969. The new agreement provided for their extension through April. When international fares expire and the new agreements are not approved by the effective date of the new fares, an "open rate" situation is created under which each individual carrier is free to establish its own level of rates within the confines of the regulatory systems of the various nations concerned, and with disagreement between the nations as to appropriate fare level left to resolution by diplomatic consultation or possible exclusion by one nation of another nation's carrier if the rates are not satisfactory to it. As hereinafter detailed, this can lead to serious international repercussions.

<sup>14/</sup> Order 69-3-1 (A. 10 ). The schedule called for full documentation and economic justification from the IATA carriers (Pan American and TWA) by March 13; complaints and objections by interested parties by March 27 (later extended to April 4); and answers by April 4 (later extended to April 11).

In accordance with the Board's order, Pan American and TWA filed their economic analyses and justifications in support of the agreements. (A. 20-50).<sup>15</sup> Thereafter, NACA filed a lengthy document setting forth its objections to the agreements themselves and to the procedure being followed by the Board in processing them (A. 51-129). Although §412 does not require evidentiary hearings, NACA urged that one was required in this case before the agreements could be approved, on grounds that the procedure followed had not provided the necessary factual basis for resolving the issues raised (A. 57-88).<sup>16</sup> However, NACA contended that, on the record before it, the Board was required to disapprove the agreements because the evidence demonstrated that they were adverse to the public interest and in violation of the Act (A. 71-72). In general, it argued that there was no economic justification for elimination of the round-trip discount and that this was merely a device to subsidize the various bulk and group fares, repeating its familiar argument that the latter fares were themselves allegedly unlawful under the accepted rate-making norms embodied in §§404(b) and 402(f) of the Act (*infra*, pp. 49, 52).

<sup>15</sup> The day after Pan American and TWA filed their analyses and justifications, NACA applied to the Board for a subpoena requiring them to produce additional evidence. At the same time, it requested suspension of the procedural dates pending compliance with the subpoena. The carriers complied with the subpoenas in part, but moved to quash them as to other materials (A. 72, 73). The Board's Chief Examiner denied NACA's motion to suspend the procedural dates, but did extend the time for filing complaints and objections to the agreements, and answers thereto (A. 82). He also granted the motions of Pan American and TWA to quash portions of the subpoena (A. 83). This ruling was appealed to the Board by NACA.

<sup>16</sup> NACA had made a similar contention in a petition for reconsideration of the original order establishing the procedures to be followed (A. 14).

and designed for the purpose of diverting charter traffic from the supplementals ( A.92 ). NACA also argued that the California proportional fares were unjustly discriminatory and/or unduly preferential in violation of §§404(b) and 1002(f).

Pan American and TWA both filed detailed factual answers to these objections. They argued that elimination of the round-trip discount on normal fares was fully justified by the liberalization of other fares; that the challenged group fares were neither unjustly discriminatory nor unduly preferential; and that they were designed to generate new traffic, as well as to provide entirely proper competition for the supplementals, and to attract traffic from their own charters to their scheduled services. (A. 202-21, 225-22 ). They also argued that the procedures provided for by the Board were fair and adequate. (A.225-26 ).

On April 16 the Board heard oral argument, having determined earlier that this would serve the public interest in view of the "considerable controversy surrounding the agreement" (A. 201). Thereafter, on April 30, the Board issued the first of the orders here challenged by petitioners (A. 251). After summarizing the essential provisions of the agreement, the Board turned to the contentions of the parties. With respect to the elimination of the round-trip discount, it stated (A.267):

"It is alleged, inter alia, that the increase is unjustified and seems to subsidize low group fares directed at the supplemental carriers, at the expense of the business traveler. NACA further asserts that the fare increase stemming from elimination of the roundtrip discount is not offset by the extension

of the 14-21-day individual excursion fares and the individual IT fares, within the meaning of a prior Board statement that any change in the roundtrip discount should be accompanied by offsetting fare adjustments (not including the bulk fare plan). These contentions, together with data included in the most recent IATA cost committee report, and the 1968 rate of return experienced by TWA for transatlantic operations (11.5 percent excluding investment tax credits) point to the need of an expedited investigation as to the elimination of the round-trip discount . . ."

The Board also determined to set for full investigation, the Bulk Inclusive Tour Fares, including the California proportional, observing as follows (A.253):

"The Board, however, notes the contention of the supplemental carriers that these fares are uneconomic, and have been designed to capture supplemental carrier charter traffic. These allegations can best be fully explored through a formal hearing. The Board believes that sufficient question has been raised to require that they be included in the investigation. The investigation of the contract bulk inclusive tour fares will include within its scope the issue of unjust discrimination and undue preference and prejudice stemming from the relationship of the proportional fares (add-on to the New York fares) applicable to specified California points as compared with the add-ons to other United States points."

While setting the elimination of the roundtrip discount and the establishment of the CBIT fares for investigation, the Board found that both should be permitted to take effect pending completion of the investigation. <sup>17/</sup> Until March 31, 1970. With respect to the former, the

<sup>17/</sup> (A.257). As previously noted, the CBIT fares are not due to go into effect until November 1, 1969.

Board was unable to conclude that the carriers would obtain any excessive revenue increase in light of the adjustments made in 14-21 day excursion fares and the individual inclusive tour fares (neither of which involves group travel)(A.258 ). As previously indicated, they were extended to include periods in which they had previously been inapplicable, i.e., weekends and summer peak periods. This, the Board said, "will bring the advantage of these promotional fares, which will be at much lower levels than would otherwise be applicable for travel during these periods at the normal economy fares, to a significant number of additional passengers" (A.258 ). The Board found that there were indications of "potential fare savings of a magnitude comparable to the fare increase which will be effectuated by discontinuance of the roundtrip discount" (ibid). In light of the offsetting effect of the extension of the excursion fares and the benefits which this extension would bring to the public, the Board was "not prepared to disapprove the elimination of the roundtrip discount pendente lite" (A.258 )

In permitting the CBIT fares to go into effect pendente lite, the Board stated that they

"... envisage an entirely new concept of marketing. The fares proposed are lower than any fares ever offered in scheduled service on the Atlantic. Lower tour prices made possible by the lower air fares should serve to enable many persons to travel by air who would not otherwise be able to use air transportation, and we believe that approval is warranted in the public interest during the limited period through March 31, 1970. This limited approval will permit some experience to be gained with respect to both the generative aspects of the fares



and their impact upon the supplemental carriers"  
(A. 286 ). <sup>18</sup>

While NACA did not petition for reconsideration, various parties did, urging that the Board's approval of the CBIT fares should be extended beyond April 1, 1970 on grounds that the carriers and the travel industry needed a degree of certainty as to the fares which would be available during the 1970 summer season and also lead time would be needed in planning and marketing tours (A. 290 ). NACA responded, opposing any such extension, but stating that it would not object to the Board's approval of the changes in the group inclusive tour fares which were not to go into effect until April 1, 1970 and upon which the Board had originally deferred action) (A. 282 ).

In response the Board issued the second of the two orders under review (Order 69-7-21, A. 290 ). It determined to approve the change in the group inclusive tour fare, but found that its limited approval of the CBIT fare resolution should not be extended (A. 291 ). It noted that the CBIT was a new element in the transatlantic fare structure and that the public interest would best be served by investigating it before it came into general use during the peak season (A. 292 ). In this connection the Board emphasized the relative novelty of the proposed CBIT fares, as contrasted with long established ones containing elements similar to the group inclusive tours (A. 292 ).

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<sup>18</sup> The Board was not, however, mindful of NACA's allegations of unjust discrimination. For example, it found the incentive group fare "troublesome" in this respect because limited to profit-making organizations and it conditioned its approval upon elimination of this restriction (A. 262 ).

The hearings ordered by the Board have been concluded. Briefs were scheduled to be filed with the examiner three days prior to the holding of this brief.

In the meantime, a petition was filed by Pan American on September 16, 1969, requesting leave to file, as an unauthorized document, a second petition for reconsideration alleging changed circumstances since the date of the Board's order denying reconsideration, and requesting that the Board extend its approval of the CBIT resolution through September 30, 1970. Answers supporting Pan American's petition were filed by TWA and the Department of Transportation, while NACA opposed. In light of the importance of the issues raised and because of various international repercussions flowing in part from the fact that the Board's approval of the CBIT resolution was limited to the period ending March 31, 1970, the Board entered Order 69-10-51 (October 10, 1969) announcing that it would receive briefs and oral argument from the parties to the proceeding before ruling upon the merits of Pan American's petition. Oral argument was scheduled for October 27, 1969.<sup>19/</sup>

#### SUMMARY OF ARGUMENT

NACA's principal argument is that the Board was required to hold an extraordinary hearing before the Board granted any approval of the

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<sup>19/</sup> We will, of course, keep the Court advised of any subsequent developments.

agreements on grounds that NACA had made a prima facie showing that the fares were unlawful and adverse to the public interest. The contention must be rejected for a number of interrelated reasons. The overriding consideration is that the Board did in fact direct an evidentiary hearing with respect to the fares which introduced significant new elements into the fare structure. While it also permitted those fares to go into effect pendente lite, it is settled that an evidentiary hearing is not required before the Board approves or disapproves an agreement under Section 412 and whether to do so is a matter for the Board's discretion. There is no showing of abuse of discretion in this case. While the resolutions were designed to attract traffic to the IATA carriers' scheduled services, this was a legitimate objective in itself. The IATA carriers and the supplementals are competitive, and moreover the IATA promotional fares are also designed to attract traffic from those carriers' own charter services in order to fill empty seats on their scheduled flights thereby eliminating uneconomic duplication of operations.

NACA also is urging in effect that, to protect its members from competition, the fares could not be permitted to become effective until after the investigation. Even in the domestic field, however, the question whether a new rate or fare is to be suspended pending investigation is not open to review, and in the foreign field the Board does not even have suspension power. There is therefore no basis for NACA's complaint on this score.

Moreover, there were affirmative public interest considerations supporting pendente lite approval. The fares would bring significant benefits to the traveling public, and international transportation and foreign relations factors militated against an open-rate situation. No property rights of NACA or its members were adversely affected and, to repeat, an expedited evidentiary hearing into the most significant resolutions was directed. While the investigation does not include the remaining resolutions, they embody fares which, in their fundamental aspects, are time-honored elements of the fare structure. Nevertheless, should the investigation substantiate NACA's objections, the Board can be expected to take appropriate action with respect to the rest.

NACA also contends that the Board's orders are unsupported by adequate findings with respect to the substantive challenges to the fares. The Board did recognize NACA's principal contentions and set the significant agreements for hearing to consider them. At the same time it fully explained why it was not persuaded that a sufficient showing of illegality had been made to warrant withholding approval pendente lite. The fares not set for investigation were not novel and the Board has in earlier cases explained why they are not, as NACA contends, unjustly discriminatory as a matter of law. No purpose would be served by remanding to the Board for it to repeat what it long ago said. Moreover, all of the challenged resolutions are a package and, should the investigation uncover something new, the Board will be free to take appropriate action and make further findings, if necessary, with respect to all of the fares.

ARGUMENT

1. The Board did not abuse its discretion in approving the IATA resolutions pending its investigation of the principal fare changes.

NACA recognizes, as it must, that Section 412 of the Act does not in terms require an evidentiary hearing as a prerequisite to approval of inter-carrier agreements, and that the question whether one should be held is committed to the sound discretion of the Board.<sup>20/</sup> The procedural issue presented by NACA, then, is simply whether the Board abused its discretion in following the course it took in this case.

In general, the IATA resolutions before the Board fell into two categories: (1) those providing for the retention, with some variations, of existing promotional and discount fares, and (2) those providing for the introduction of significant new elements into the fare structure, i.e., the elimination of the round-trip discount and the contract bulk inclusive tour fares.<sup>21/</sup> The Board ordered a full evidentiary hearing

<sup>20/</sup> The absence of a hearing requirement in Section 412, in contrast to the specification of such a requirement in numerous other sections of the statute, has led to uniform recognition of this principle by the courts. Elmazy Travel Bureau v. Civil Aeronautics Board, 121 U.S. App. D.C. 335, 350 F.2d 733 (1965); Railway Express Agency v. Civil Aeronautics Board, 120 U.S. App. D.C. 228, 345 F.2d 445 (1965), cert. denied, 382 U.S. 279; McManis v. Civil Aeronautics Board, 310 F.2d 762 (C.A. 2, 1962). <sup>21/</sup> Eastern Air Lines v. Civil Aeronautics Board, 27 U.S. App. D.C. 331, 125 F.2d 426 (1950); Law Motor Freight v. Civil Aeronautics Board, 364 F.2d 139 (C.A. 1, 1966), cert. denied, 377 U.S. 755.

<sup>21/</sup> It is true that the incentive group fare is new but, as previously indicated, the Board so conditioned its approval of the resolution that its basic elements are substantially the same as the time-honored affinity group fare, and NACA's objection to it is the same as its objection to the affinity group fare.

with respect to the latter resolutions.<sup>22/</sup> NACA obviously has no quarrel with this, and its real contention is that the Board either should have disapproved the resolutions, or postponed action on them until completion of the evidentiary hearings. Its obvious thought was that it might thereby immunize itself, during the pendency of the investigation, from additional competition either on the theory that a threshold disapproval or postponement of approval by the Board would have served to continue the existing fares in effect on April 30, or at least that tariff filings under an "open rate" situation would have been less undesirable (from their standpoint) than the fares embodied in the resolutions.<sup>23/</sup>

While recognizing that an evidentiary hearing is not required under Section 412, NACA points to the Section 412 provision that the Board

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<sup>22/</sup> The investigation encompasses the questions of whether the CSIT fares and the elimination of the round-trip discount will result in unjust discrimination, preference, or prejudice, and whether such fares constitute predatory practices directed to the supplemental carriers. As more fully explained hereinafter, these issues are sufficiently broad to permit the Board to apply the determinations reached in the investigation to the other discount and promotional fares for transatlantic transportation.

<sup>23/</sup> Apparently, it entertains similar expectations in the event the Court rules adversely to the Board on this appeal. However, as we have previously noted and will have occasion to stress again later, each individual carrier operating across the North Atlantic is free to file tariffs fixing rates at any level it chooses in the absence of effective IATA resolutions governing the fare level. Moreover, we note TWA's unequivocal statement, in opposing NACA's motion for stay pending judicial review of the Board's order, that it intended to put the new fares into effect regardless of whether there was an open rate situation.

shall disapprove any agreement "that it finds to be adverse to the public interest or in violation of this Act," and alleges that a hearing was required in the circumstances of this case to consider its contentions that the challenged agreements ran afoul of both these standards. NACA urges that it had made out a prima facie case that the resolutions reflected a predatory device aimed at capturing the supplementals' traffic through unreasonable and unjustly discriminatory fares. In short, NACA's position is that the supplementals' competitive interests required disapproval or deferral of approval pending investigation, despite weighty public interest considerations supporting approval of the resolutions.

We submit that an examination of the Board's action in the light of all the relevant facts and circumstances affords more than ample support for the conclusion that the Board exercised its procedural discretion in a reasonable fashion. To be sure, the Board found that the NACA contentions regarding a predatory design warranted an investigation and it ordered one. The question, however, is whether NACA's showing was so strong that the Board can be said to have abused its discretion in granting pendente lite approval. We submit that it was not. Obviously, the new CBII fares, as well as the existing promotional fares, are designed to attract traffic to the scheduled services and obviously were fixed in light of the competitive situation which exists between the IATA carriers on the one hand, and the U.S. and foreign charter carriers on the other. This, however, is entirely legitimate on its



face. Indeed, the petitioning supplemental carriers were granted transatlantic authority in part to "provide a stimulus to the IATA carriers to develop a fare structure directed at developing a mass market . . . ." Transatlantic Charter Investigation, 40 C.A.B. 233, 255 (1963). Moreover, their stated purpose was not only to compete with the supplementals, but also to divert the IATA carriers' own sizable charter traffic to their scheduled operations. In any event, the petitioners are not entitled to be free of competition, or to the continued existence of a competitive situation in which the IATA rates are substantially higher than theirs. Indeed, the petitioners still appear to enjoy the competitive advantage in terms of rates even under the present IATA proposals, and they also remain free to further adjust their rates if they so desire. Their contentions in substance are that the Board is somehow obligated to do its best to maintain higher rates by the IATA carriers for the benefit of the supplementals, and this notwithstanding the fact that the Board lacks rate-fixing power in foreign air transportation.

Further, the petitioners are arguing in essence that the Board erred in permitting the new rates to become effective pending a determination of their lawfulness, and this in an area which is particularly committed to administrative discretion. Indeed, had the rates here involved been for interstate or overseas transportation, the petitioners would have had no basis for challenging the Board's determination not

to suspend. <sup>24/</sup> As heretofore pointed out, however, Congress has withheld tariff suspension and rate fixing power in the international field. Thus, NACA is placed in the anomalous position of urging that, to protect the supplementals from competition, the Act bestows greater protection in the foreign field than in the domestic field, and that the Board abused its discretion in doing in the international field <sup>25/</sup> what the Court could not even review had domestic fares been involved.

The Board's determination to approve the resolutions at this time is clearly supported on public interest grounds. One of the Board's basic statutory responsibilities is, of course, the traveling public and it has always striven to exercise its powers in such manner as to make air transportation available to the greatest possible number of people at the lowest possible fares. This aspect of the current

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<sup>24/</sup> The question whether a new rate or fare is to be suspended pending an investigation into its lawfulness has repeatedly been held to be committed to the unreviewable discretion of the agency. National Airlines v. Civil Aeronautics Board, C.A.D.C. No. 10,749, order of August 4, 1959 (not reported); Arrow Transportation Corp. v. Southern Railroad Co., 372 U.S. 652 (1963); Movers & Warehousemen's Association v. United States, 227 F. Supp. 249 (D.C.D.C. 1964), Long Island Railroad Co. v. United States, 193 F. Supp. 795 (E.D.N.Y., 1961).

<sup>25/</sup> The fact that the Board order here involved is one of approval under Section 412, as opposed to an order denying a request for a tariff suspension under Section 1002, cannot serve to obscure this principle. Rates in both domestic and foreign air transportation are ultimately "fixed" by the filing of tariffs with the Board, and the Board is empowered to approve agreements under Section 412 for discussions between carriers concerning domestic rates. Had a Section 412 order been entered approving an agreement to file domestic rates, and had tariffs then been filed effectuating the agreement, the question of the suspension of such tariffs pending the investigation plainly would have been left to the virtually unreviewable discretion of the Board.

resolution loomed large in the Board's determination to approve the pendente lite. Thus, the Board observed that the elimination of the blackout periods previously applicable to the excursion and individual inclusive tour fares "would benefit a significant number of passengers" (A. 258).<sup>26/</sup> Moreover, with respect to the CBIT fares, the Board noted that they "should serve to enable many persons to travel by air who would not otherwise be able to use air transportation" and, in addition, that the limited approval pendente lite would "permit some experience to be gained with respect to both the generative aspects of the fares and their impact upon the supplemental carriers" (A. 258). In sum, the traveling public stood to receive substantial benefits, clearly a consideration pointing strongly to approval.

The context in which the case arose also strongly supports the reasonableness of the Board's procedure. As the Board pointed out in its original order, time was of the essence since the existing agreements were scheduled to expire on April 30 and failure to act would have led to an open rate situation. The agreements fixing international rates represent a compromise of the rate-making philosophies and interests of the different carriers and their governments, and this nation cannot unilaterally impose its will upon the other nations through an application.

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<sup>26/</sup> While this resolution is not challenged by NACA, it is distinctly relevant to the case since it was a part of the whole package and the Board found that the record contained a basis for the contention of Pan American and TWA that the resultant fare savings might well be "of a magnitude comparable to the fare increase which will be affected by discontinuance of the round-trip discount" (A. 258).

of the antitrust laws or by any other method if the foreign nations are unwilling. Thus, an open rate situation can lead to serious international repercussions. As we pointed out in successfully opposing NACA's request for a stay pending review, this is by no means a fanciful possibility. On the contrary, it has a solid historical basis. Thus, in 1963 the Board disapproved the "Chandler Resolution" (so-called because it was adopted by IATA traffic conferences at meetings at Chandler, Arizona), insofar as it provided for a reduction in the round-trip discount from 10 to 5 percent, finding that this would produce an unreasonably high fare (38 C.A.B. 1063). Several foreign governments, however, insisted upon observance of the Chandler fares by U.S. carriers as a condition to their continued operation into the countries involved, and they backed up their demands by threatening to seize the aircraft of any U.S. carriers which failed to comply. There resulted a loud hue and cry from Congress and other sources urging retaliatory action, including legislative proposals for the seizure by this Government of the aircraft of the other nations, and naturally enough, strained international relations. In the end, the United States retreated from its stand and the agreement was approved.

Indeed, the conflicting interests of foreign Governments and their carriers have already given rise to considerable repercussions under the resolutions here in question. As NACA pointed out in petitioning for a stay, Greece insisted that the OBIT fares go into effect immediately notwithstanding that under the resolution it was marked for

November 1, 1969 effectiveness. More recently, and partly because of dissatisfaction with the fact that the Board's approval of the CBIT fare resolution was limited to the period ending March 31, 1970, Alitalia, an Italian carrier, announced that it would not be bound by any of the resolutions. The upshot has been the convening of an emergency meeting of IATA to review the transatlantic fares and widespread confusion in international transportation circles as to planning for the 1970 season. It was in the context of these developments that the Board determined to hear oral argument on Pan American's second petition for reconsideration of the March 31, 1970 limitation on the Board's approval of the CBIT resolution.

All of this is not to say that the United States is precluded from disapproving a particular IATA resolution and thereafter attempting through the process of negotiation or otherwise to achieve the result which it desires. There well may be circumstances in which disapproval is warranted irrespective of the possible international repercussions. Indeed, the Board may yet determine to disapprove the fares under investigation and, as subsequently explained, withdraw approval of those not set for formal hearing. The point is, however, that far more is involved than the United States and its isolated interests. The whole international aviation community, with conflicting interests and philosophies, is involved and the practical ramifications of this are such that the Board cannot ignore them. What might be a desirable course of action if the United States and its carriers were the only

ones involved, may be a luxury the United States cannot afford where international transportation is concerned. The interests of the foreign governments and their carriers must be taken into account. As the Board long ago stated (Investigation of Reduced Exchange-Fare Charges, 12 C.A.B. 75, 76 (1950):

"Our appraisal of IATA resolutions often is affected by an evaluation of views of interested foreign governments and foreign carriers, by an appraisal of the possible advantages of approval as compared with the possible dangers attendant upon the opposite situation that might result from disapproval, and by the limits of our jurisdiction in foreign air transportation, where our rate powers are limited to the removal of discrimination. A mere recital of these considerations makes it apparent that the factors to be considered in passing on IATA resolutions frequently differ from the criteria with which we measure similar proposals in interstate or overseas air transportation."

As this indicates, even the considerations entering into a determination of the substantive merits of international fare resolutions include the practical realities heretofore discussed. Plainly, therefore, these same considerations strongly support the Board's determination of the procedures which would best serve the public interest in its con-  
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sideration of the agreements.

27/ Indeed, in their zeal to protect themselves from competition, the supplementals may well subvert their own, and therefore this nation's, interests. They have had considerable difficulty obtaining foreign landing rights for their transatlantic inclusive tour charters (only five were operated during all of 1962). At the same time, as we have already shown, their pro rate charters have made significant inroads upon the services of the foreign IATA carriers. Disapproval or prolonged deferral of the current resolutions which will enable the foreign carriers to compete more effectively is not likely to produce a warmer foreign climate for obtaining landing rights for U.S. inclusive tour charters.

NACA's reliance on Transcontinental Bus System v. Civil Aeronautics Board, 383 F.2d 466 (C.A. 5, 1967) and Trailways of New England v. Civil Aeronautics Board, F.2d (C.A. 1, 1969) is wholly misplaced.

In those cases, which involved domestic tariff filings, the Board had dismissed without investigation, tariffs which the courts held had been shown to be prima facie unjustly discriminatory, and the courts ordered the cases remanded for evidentiary investigations. Here, in contrast, the Board has ordered an investigation into the new resolutions containing the most controversial fares, and the contention is that it could not permit them to go into effect pending the completion of that investigation. However, neither of the cited cases supports this proposition. On the contrary, it was never suggested, and the courts did not hold, that the Board was required to suspend the tariffs there involved, for the obvious reason that this is a matter committed to unreviewable discretion. The fact is that the tariffs involved in these cases remain in effect today pending completion of the hearings ordered by the courts.

To be sure the Board did not order an evidentiary hearing with respect to the affinity group fares, the group inclusive tour fares, or the incentive group fares. However, as the Board's order reflects, and NACA's brief concedes, the basic elements of the affinity group fares and the group inclusive tour fares were not new. On the contrary, they had been embodied in the international and domestic fare structures for a number of years. See, e.g., IATA Group Fares



Agreement, 10 C.A.B. 33, 41 (1962); IATA Agreements re: Passenger Fares, 10 C.A.B. 1061 (1963); IATA Agreements, Northatlantic Fares, Order E-24523 (March 6, 1967); Continental Airlines Tour Basing Fares, Order E-25101 (May 18, 1967); IATA Agreements North/Central Pacific Group Inclusive Tour Fares, Order E-26089 (December 8, 1967).<sup>28/</sup>

In these circumstances, we submit the Board did not act unreasonably in failing to include them in the evidentiary investigation, thereby expanding its scope and delaying its disposition.

<sup>28</sup> The affinity group fares were first introduced in 1963, the group inclusive tour fares in 1967. The incentive group fares were later. However, NACA's contention is that they are discriminatory in much the same way as the affinity group fares which, as indicated in the text, have been a part of the fare structure since 1962.

Moreover, whether a fare is unlawful depends upon all of the facts and circumstances including the practical, real-world facts of life in international air transportation. As previously indicated, these have long been held to be relevant to disposition of the substantive merits of IATA fare resolutions. Investigation of Reduced Express-Baggage Charges, supra, 12 C.A.B. at p. 76. Thus, what might be an "unjust" discrimination in domestic transportation were involved, may be justified by the international situation at the time, i.e., "an evaluation of the views of interested foreign governments and foreign carriers" and "by an appraisal of the possible advantages of approval as compared with the dangers attendant upon the open-rate situation" (id.). NACA therefore grossly oversimplified by stating that, as a matter of law, the fares embodied in the resolutions in question were illegal. "[T]he factors to be considered in passing on IATA resolutions frequently differ from the criteria with which we measure similar proposals in interstate or overseas transportation" and precedents in the one area do not necessarily establish a precedent in the other.

Moreover, one of the resolutions approved by the Board (A. 130 ) provides that if any one of the resolutions is disapproved or an approval is withdrawn, all such resolutions shall be simultaneously voided. In addition, sight must not be lost of the fact that the challenged resolutions are a package, and that the Board's disposition of the investigation which it has ordered will have a bearing on all of the agreements in question. The principal thrust of NACA's argument is that these fares, like the CBIT and elimination of the round-trip discount, are part of a predatorily designed competitive package aimed at the traffic of the supplementals. If so, however, that fact will be established in the pending proceeding and a determination to that effect with respect to one would be applicable to all. Similarly, there is included within the investigation the "issue of unjust discrimination and undue preference and prejudice stemming from the relationship of the proportional fares . . . applicable to specified California points as compared with the add-ons to other United States points." (A. 258 ). Since the proportional fares are also applicable to the affinity group and incentive group fares, it is obvious that if the present investigation should reveal that these proportional fares as used in connection with the CBIT fares are unduly preferential and prejudicial, then such a finding would control as to the legality of their application to the affinity group and incentive group fares. Again, NACA claims that the CBIT fares are unlawful because of their tour-basing feature, i.e., the "tie-in" requirements of ground arrangements. If so, the group inclusive tour

fares would be subject to the same infirmity. Thus, there is nothing to preclude the Board upon request (none has thus far been made) or upon its own initiative from broadening the investigation to encompass the other fares or from institution of another investigation if the one it has already instituted uncovers evidence which casts reasonable suspicion upon the remaining fares.<sup>29/</sup>

Notwithstanding the foregoing, which demonstrates not only that the Board had discretionary authority to establish the procedures which would best serve the public interest in its consideration of the agreements, but that it exercised such discretion in a reasonable manner, NACA insists that it was entitled to a hearing by reason of this Court's statement in Fugazy Travel Bureau v. C.A.B., supra, that a complainant is entitled to a hearing if he will "be adversely affected in a legal or a property right" (350 F.2d at p. 738). According to NACA, it was entitled to a hearing because, to the extent that the Board approved the agreement, it extinguished the "legal rights" of the NACA carriers to bring suit against the IATA carriers under the antitrust laws. The short answer is that, under §414 of the Act, Congress extinguished their antitrust rights to the extent necessary to implement any agreement approved by the Board under §412 and, as we have shown, §412 empowers the Board to proceed without a hearing. Thus, this case does not differ from any other one in which the Board

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<sup>29/</sup> Section 412 empowers the Board to withdraw approval previously granted.

has, with or without a hearing, approved an agreement under §412<sup>30/</sup>  
Indeed, a contention that the Board may not confer antitrust immunity  
through approval of IATA resolutions without a hearing has heretofore  
been judicially rejected. McManus v. C.A.B., supra, 310 F.2d 762.<sup>31/</sup>

To conclude with respect to NACA's procedural contention, we  
submit that the Board exercised its discretion in an entirely reason-  
able manner by setting the most controversial agreements for hearing,  
while granting interim approval. The Board assured that the interests  
of the supplementals would be fully protected, and at the same time  
not only provided for significant benefits to the traveling public,

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<sup>30/</sup> We note in this connection NACA's reliance upon various  
Board cases to the effect that, when an agreement is filed containing  
significant elements which are plainly repugnant to established anti-  
trust principles, the burden is on the proponents of the agreement to  
show that it is neither unlawful under the Act nor adverse to the public  
interest. Burden of proof, however, is not really relevant to the  
hearing issue. Indeed, it is noteworthy that in most of the cases  
relied upon by NACA in this respect, the Board did not hold evidentiary  
hearings, providing instead for written objections and, occasionally,  
oral argument. See IATA Credit Agreements, 30 C.A.B. 1553 (1960);  
VOLUMAIR Agreement, 30 C.A.B. 1007 (1960); IATA Group Fares Agreement,  
36 C.A.B. 33 (1962). Moreover, as shown in detail subsequently, in  
approving the IATA agreement which first introduced group fares into  
the transatlantic fare structure, the Board found that the supple-  
mentals had not shown them to be illegal or adverse to the public  
interest.

<sup>31/</sup> To the extent that NACA may be claiming that it was entitled  
to a hearing because the Board's approval of the agreements will result  
in competitive injury to the supplemental carriers, it is necessary to  
point out only that in Eugazy this Court held that they have no legally  
protected interest from competition.

but undertook to avoid the serious international repercussions which could very well have resulted from disapproval of the resolutions or deferral of action on their pendente lite. In sum, it struck an entirely reasonable balance between the competing interests involved while assuring fair treatment to all concerned.

II. The Board made adequate findings to justify its action.

NACA argues that, wholly apart from the alleged illegality of the procedures followed by the Board, the Board failed to make adequate findings in support of its decision. It argues that the Board was confronted with fare agreements which violated the antitrust laws and which established fares discriminatory on their face. Accordingly, the argument runs, the Board erred in failing to find the agreements are "required by a serious transportation need, or to secure important public benefits" (Local Cartage Agreement Case, 15 C.A.B. 350, 352-3 (1952)), and that the allegedly discriminatory and preferential fares "are justified in terms of established Board precedent and policy and the relevant facts" (Railways of New England v. Civil Aeronautics Board, supra, \_\_\_ F.2d \_\_\_ (C.A. 1 1969)).

There can obviously be no quarrel with the general proposition that an agency must make findings with sufficient clarity to enable a reviewing court to perform its limited function. However, sight must not be lost of the rule that "the basic findings essential to the validity of a given order will vary with the statutory authority invoked and the context of the situation presented. Alabama G.C.R. Co. v. United States, 349 U.S. 216,

<sup>32/</sup> 228 (1951) (Emphasis added). We submit that the adequacy of the Board's findings here must be judged in the light of the Board's powers with respect to rates in international air transportation, the procedures it followed, and NACA's contentions. Moreover, as previously indicated, the supplementals' opposition to the IATA resolutions was but another round in a continuing controversy in which the supplementals have repeatedly made similar objections to promotional fare resolutions. The Board's findings here, coupled with its disposition of the supplementals' contentions in earlier rounds of the controversy, spell out with clarity the basis of the Board's action in this case. Indeed, as we subsequently show, in various pleadings filed subsequent to the Board's order, NACA in effect recognized that there was no infirmity in the Board's findings.

We start with the proposition that the Board's only direct power with respect to international rates and fares is to remove unjust discrimination and undue preference and prejudice (Section 1002(f), 49 U.S.C. 1482(f)). <sup>33/</sup> infra, p. 42). Secondly, as we have seen, of the challenged

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<sup>32/</sup> See also WAT Radio v. F.C.C., \_\_\_ U.S. App. D.C. \_\_\_, \_\_\_ F.2d \_\_\_ (1969), a case stressed by NACA, wherein the Court stated (slip opinion, p. 6):

"Of course busy agency staffs are not expected to dot 'i's' and cross 't's'. Our decisions recognize the presumption of regularity. We adhere to 'salutary principles of judicial restraint.' Courts are indulgent toward administrative action to the extent of affirming an order where the agency's path can be 'discerned' even if the opinion 'leaves much to be desired.'" (footnotes omitted.)

<sup>33/</sup> Thus, it has no power with respect to the fare levels. It cannot order air carriers or foreign air carriers to change fares even if it deems them to be unreasonably high or low.

agreements, those providing for elimination of the round-trip discount and the CBIT fares were the only ones which introduced significant new elements into the fare structure. To be sure, all of those challenged are part of a "package," but the others merely provided for continuation of existing types of fares. In other words, though the others provided for some changes in the existing types of fares, the basic features of the fares were unchanged. NACA's principal contention was and is that the elimination of the round-trip discount and the CBIT fare were merely an anticompetitive device designed to subsidize the group fares directed at the supplemental carriers. It also urges that all of the group fares are unjustly discriminatory as a matter of law.

As NACA conceals, in setting the elimination of the round-trip discount and the CBIT fares for hearing, the Board explained why it was granting temporary approval of these agreements pending disposition of the hearing. It found that the CBIT fares would provide substantial benefits to the traveling public, stating that the "lower tour prices made possible by the lower air fares should serve to enable many persons to travel by air who would otherwise be unable to do so." (A 252). It also found that permitting the CBIT fares to go into effect pendente lite would provide "some experience . . . with respect to both the generative aspects of the fares and their impact upon the supplemental carriers", thereby affording a basis for a more informed disposition of the investigation (A 252). Moreover, insofar as the elimination of the roundtrip discount was concerned the Board found evidence of "potential



fare savings of a magnitude comparable to the fare increase" which would result from elimination of the discount.<sup>34/</sup>

In short, while the Board determined that it would hold an evidentiary hearing with respect to the question whether the elimination of the roundtrip discount and establishment of the CEIT fares was a predatory competitive device designed to capture the supplementals' charter traffic through use of uneconomic and discriminatory fares, the Board in effect found that they were not on their face or on the basis of the materials before it prima facie adverse to the public interest or in violation to the Act. On the contrary, the Board found that they appeared to be justified by valid economic and competitive considerations and that such doubts as existed with respect to them were overridden by the public benefits which would flow from their temporary approval. Hence, as the Board said, it could not find them adverse to the public interest or in violation of the Act. Plainly this was a justifiable conclusion. The situation was substantially the same as in IATA Group Fares Agreement, 36-C.A.B. 33, 38-39 (1962) in which the Board granted final approval to an IATA group fare resolution:

"Despite the charges of the part 205 carriers [the supplementals], we are unable to find that the group-fare resolution was motivated by a predatory intent to eliminate non-IATA competition. The record established a primary design to (1) tap new traffic sources, and (2) eliminate the economic

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<sup>34/</sup> (A 258). This finding was based upon the adjustments made in the 14-21 day excursion fares and individual inclusive tour fares.

were involved in the carriage of passengers on IATA carrier charters while the same carrier's scheduled flights are carrying excessive empty seats. Ob-  
viously, the IATA carriers were aware that the group fares would divert traffic from their competi-  
tors, but the record will not support the contention  
that the group fare is in the nature of a "fighting  
only."

\* \* \*

Apart from the question of predatory intent,  
the question arises as to whether the economic impact  
of the group fares on the part 295 carriers will be  
so serious as to warrant disapproval. On the basis  
of the facts before us, we cannot so conclude.

To begin with, there has been no persuasive  
evidence that the group fares will eliminate trans-  
atlantic charter operations. The group fares them-  
selves are significantly higher than typical charter  
rates, and even after allowance for additional ex-  
penses which must be pro-rated to the charter passen-  
ger, but which are absorbed in the group fares, it  
is apparent that there will still be a significant  
price differential between charter and group fares.  
Moreover, quite apart from price considerations, the  
opportunity to occupy an entire airplane would be  
considered advantageous to many large groups who  
desire to travel together as a unit." 35/

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35/ We note in this connection NACA's repeated insistence that,  
because the agreements would violate the antitrust laws (absent Board  
approval), the IATA carriers were required to show, and the Board was  
required affirmatively to find that approval was necessary "to fill a  
serious transportation need or secure important public benefits" (citing  
IATA Credit Agreements, 30 C.A.B. 1953, 1955 (1960)). The short answer  
is that virtually all IATA agreements would violate the antitrust laws  
unless approved by the Board. However, the foreign relations impli-  
cations and service and price wars which could result from an open rate  
situation fully justify approval of fare agreements as being "required  
by serious transportation need" or "to secure important public benefits,"  
in the absence of a clear showing that they are unlawful or adverse to  
the public interest. See Investigation of Reduced Excess-Baggage  
Charges, supra, 12 C.A.B. at p. 76. Moreover, it is clear from the  
language quoted in the text that the IATA carriers were not under the  
burden which NACA would assign to them. Rather, as it discloses, it  
was incumbent upon NACA to prove its contentions.

As this indicates, insofar as NACA claimed that the resolutions were aimed at unfairly capturing the supplementals' charter traffic, the Board would have been justified in granting final approval to these agreements without ordering a hearing. A fortiori, the record and the Board's findings based upon it adequately support its temporary approval of the agreements pendente lite.

It is true, as NACA says, that the Board did not discuss in this order NACA's assertion that the CBIT fare was unjustly discriminatory because it involves a "tour basing" feature, i.e., that they are available only to groups which have purchased not only air transportation but a specified minimum for land accommodations. NACA's contention in this respect is that such a feature renders the fare unjustly discriminatory as a matter of law. However, this contention was dealt with and rejected by the Board in the 1967 round of the running supplemental-IATA controversy. Thus, in approving various IATA agreements providing for such fares, the Board stated as follows in 1967:

"It has been asserted that the group inclusive tour-basing fares are unjustly discriminatory because they are available only if ground accommodations are also purchased. These fares are available to all persons. There are no restrictions based on the characteristics of status of the user i.e., occupations, club membership, etc. The tie-in feature with the purchase of ground accommodations does not seem to be an unreasonable one, in view of the considerable discount these fares provide from normal and other fares. Moreover, these fares, coupled with attractive tours in the United States, Europe, and countries in the Middle East and Far East, should prove to be a strong stimulus to airline traffic. The lower price of such tours made possible by the lower cost of air transportation should enable many persons to travel by air

who would not otherwise be able to use air transportation." Id.

NACA's complaint with respect to the affinity group and incentive group fare resolutions has been considered and long-since rejected by the Board. The objection is that these fares are unreasonably discriminatory as a matter of law because of the restrictive provisions with respect to the groups who may obtain the discount. However, when the Board first approved transatlantic group fares, it rejected precisely the same contention, stating (IATA Group Fares Agreement, supra, 30 C.A.B. at p. 41):

"... a question of discrimination is raised by the restrictions on the applicability of the fares to groups with prior affinity . . .

"The rules set forth in the resolution with regard to formation of groups are tailored after the existing rules as to charter availability contained in earlier IATA resolutions and are not significantly different from those contained in part 295 [the Board's regulations governing transatlantic charters by the supplemental air carrier]. The carriers appear to have made a conscientious effort to provide for maximum eligibility under the group fares while at the same time insuring that groups will not be formed by means of public solicitation of individual persons . . . Thus, the groups which are eligible for travel under the group-fare proposal are essentially the same as those which would be eligible for charters under established Board policy. However, this bare fact alone does not mean that the discriminations involved are justified.

"It is apparent that a broadening of eligibility which would have the effect of permitting public solicitation could defeat the very purpose of the group fares by creating a massive diversion from the standard fare

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36/ Order E-21223 (March 6, 1967). The quoted language is also responsive of NACA's contention that the group inclusive tour resolution was unlawfully discriminatory.

service. In view of the heavy public interest considerations favoring the group fare, we cannot find that the restrictions on eligibility render the fares unjustly discriminatory."

Against this background and the Board's statement here that it had "considered all of the allegations raised by the parties including those not specifically adverted to herein" (A. 263 ), the Board adequately disposed of contentions theretofore answered. NACA's contention is thus simply that the Court should remand the case to the Board so that it might say what it long ago said. This, we submit, makes no sense.<sup>37/</sup>

In sum, the Board's findings were entirely adequate in the context of the situation with which it was confronted. It explained why it could not find the most significant and controversial agreement adverse to the public interest or in violation of the Act, and its explanation fully supports its conclusion. These reasons were no less applicable to the remaining agreements, which embodied time-honored elements of the fare structure. At the same time, though not required by law to do so, it directed an evidentiary hearing with respect to the agreements introducing new elements. To the extent that that investigation develops additional evidence requiring further

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<sup>37/</sup> Even if the Board's order be viewed as technically deficient because it fails to advert to or repeat prior rulings on the same contentions, this Court has recognized that technical deficiencies in findings are not necessarily prejudicial error. New Castle County Airport Comm'n v. Civil Aeronautics Board, 125 U.S. App. D.C. 268, 371 F.2d 733 (1966); Braniff Airways v. Civil Aeronautics Board, 126 U.S. App. D.C. 399, 379 F.2d 453 (1967).

findings, the Board may be counted upon to make them, and also to take further action with respect to the other agreements should the evidence in the investigation cast doubt upon the other parts of the package.<sup>38/</sup>

In these circumstances, we submit not only that the Board's "path can be discerned" (NACA Radio v. F.O.C., supra), but that it is <sup>39/</sup>entirely clear and reasonable. No more is required.

<sup>38</sup> As NACA concedes and as previously indicated, the Board has no power under §1002(2) with respect to fare levels in foreign air transportation. To the extent that they are nevertheless an element of the public interest standard under §112, this will be explored in the pending investigation and, if the CBIT fares are there found to be unreasonably low, the Board will be free to take appropriate action with respect to the other group fares if the CBIT fare level casts suspicion on them.

<sup>39</sup> Finally, we note that NACA's contentions with respect to findings appear to be an after thought. It did not seek additional findings by petitioning for reconsideration, though this is the accepted method of raising and preserving this issue for review. cf. Seaboard & Western Airlines v. Civil Aeronautics Board, 37 U.S. App. D.C. 78, 133 F.2d 975 (1945). Moreover, in its petition to the Board for a stay pending judicial review, absence of adequate findings was not mentioned as a ground for its probable success in the courts. Still later, in opposing Pan American's petition for reconsideration which sought approval of the CBIT fare resolution through the 1970 summer season, NACA specifically stated that it had no objection to approval of the group inclusive tour resolution (which had been deferred) to which, it said, it objected on purely legal grounds. Finally, in its motion for a stay by the Court, NACA argued at length the reasons it was likely to prevail on the merits. Not a word did it say in this connection, however, about alleged inadequacy of findings. Section 1001(e) of the Act (49 U.S.C. 1426(e)), infra, p. 53, bars consideration of after-thought contentions such as this. Further, we submit that NACA's position from the time the Board's order was issued until its brief was filed is a fair measure of the merits of the findings contentions raised for the first time in that brief. The truth is that it had no difficulty discerning the Board's path in the light of the supplemental regular efforts to blunt effective competition by the NACA carriers and the Board's prior disposition of earlier rounds of that continuing controversy.

CONCLUSION

The Board's order should be affirmed.

Respectfully submitted,

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APPENDIX A

Relevant provisions of the Federal Aviation Act of 1958, 72 Stat.  
737, 49 U.S.C. 1301 et seq.:

TITLE I - GENERAL PROVISIONS

\* \* \* \* \*

DECLARATION OF POLICY: THE BOARD

Sec. 102. [72 Stat. 740, 49 U.S.C. 1302] In the exercise and performance of its powers and duties under this Act, the Board shall consider the following, among other things, as being in the public interest, and in accordance with the public convenience and necessity:

(a) The encouragement and development of an air-transportation system properly adapted to the present and future needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(b) The regulation of air transportation in such manner as to recognize and preserve the inherent advantages of, assure the highest degree of safety in, and foster sound economic conditions in, such transportation, and to improve the relations between, and coordinate transportation by, air carriers;

(c) The promotion of adequate, economical, and efficient service by air carriers at reasonable charges, without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices;

(d) Competition to the extent necessary to assure the sound development of an air-transportation system properly adapted to the needs of the foreign and domestic commerce of the United States, of the Postal Service, and of the national defense;

(e) The promotion of safety in air commerce; and

(f) The promotion, encouragement, and development of civil aviation.

\* \* \* \* \*

TITLE IV -- AIR CARRIER ECONOMIC REGULATION

\* \* \* \* \*

TARIFFS OF AIR CARRIERS

Filing of Tariffs Required

Sec. 1373 [72 Stat. 758, as amended by 74 Stat. 445; 49 U.S.C. 1373]  
Every air carrier and every foreign air carrier shall file with the

Board, and print, and keep open to public inspection, tariffs showing all rates, fares, and charges for air transportation between points served by it, and between points served by it and points served by any other air carrier or foreign air carrier when through service and through rates shall have been established, and showing to the extent required by regulations of the Board, all classifications, rules, regulations, practices, and services in connection with such air transportation. Tariffs shall be filed, posted, and published in such form and manner, and shall contain such information, as the Board shall by regulation prescribe; and the Board is empowered to reject any tariff so filed which is not consistent with this section and such regulations. Any tariff so rejected shall be void. The rates, fares, and charges shown in any tariff shall be stated in terms of lawful money of the United States, but such tariffs may also state rates, fares, and charges in terms of currencies other than lawful money of the United States, and may, in the case of foreign air transportation, contain such information as may be required under the laws of any country in or to which an air carrier or foreign air carrier is authorized to operate.

#### Observance of Tariffs: Rebating Prohibited

(c). No air carrier or foreign air carrier shall charge or demand or collect or receive a greater or less or different compensation for air transportation, or for any service in connection therewith, than the rates, fares, and charges specified in its currently effective tariffs; and no air carrier or foreign air carrier shall, in any manner or by any device, directly or indirectly, or through any agent or broker, or otherwise, refund or remit any portion of the rates, fares, or charges so specified, or extend to any person any privileges or facilities, with respect to matters required by the Board to be specified in such tariffs, except those specified therein. Nothing in this Act shall prohibit such air carriers or foreign air carriers, under such terms and conditions as the Board may prescribe, from issuing or interchanging tickets or passes for free or reduced-rate transportation to their directors, officers, and employees (including retired directors, officers, and employees who are receiving retirement benefits from any air carrier or foreign air carrier), the parents and immediate families of such officers and employees, and the immediate families of such directors; widows, widowers, and minor children of employees who have died as a direct result of personal injury sustained while in the performance of duty in the service of such air carrier or foreign air carrier; witnesses and attorneys attending any legal investigation in which any such air carrier is interested; persons injured in aircraft accidents and physicians and nurses attending such persons; immediate families, including parents, of persons injured or killed in aircraft accidents where the object is to transport such persons in connection with such accident; and any persons or property with the object of providing relief in cases of general epidemic, pestilence, or

other calamitous visitation; and, in the case of overseas or foreign air transportation, to such other persons and under such other circumstances as the Board may by regulations prescribe. Any air carrier or foreign air carrier, under such terms and conditions as the Board may prescribe, may grant reduced-rate transportation to ministers of religion on a space-available basis.

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#### RATES FOR CARRIAGE OF PERSONS AND PROPERTY

##### Carrier's Duty to Provide Service, Rates, and Divisions

Sec. 404. [72 Stat. 760, 49 U.S.C. 1374] (a) It shall be the duty of every air carrier to provide and furnish interstate and overseas air transportation, as authorized by its certificate, upon reasonable request therefor and to provide reasonable through service in such air transportation in connection with other air carriers; to provide safe and adequate service, equipment, and facilities in connection with such transportation; to establish, observe, and enforce just and reasonable individual and joint rates, fares, and charges, and just and reasonable classifications, rules, regulations, and practices relating to such air transportation; and, in case of such joint rates, fares, and charges, to establish just, reasonable, and equitable divisions thereof as between air carriers participating therein which shall not unduly prefer or prejudice any of such participating air carriers.

##### Discrimination

(b) No air carrier or foreign air carrier shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

\* \* \* \* \*

#### POOLING AND OTHER AGREEMENTS

##### Filing of Agreements Required

Sec. 412 [72 Stat. 770, 49 U.S.C. 1382] (a) Every air carrier shall file with the Board a true copy, or, if oral, a true and complete

memorandum, of every contract or agreement (whether enforceable by provisions for liquidated damages, penalties, bonds, or otherwise) affecting air transportation and in force on the effective date of this section or hereafter entered into, or any modification or cancellation thereof, between such air carrier and any other air carrier, foreign air carrier, or other carrier for pooling or apportioning earnings, losses, traffic, service, or equipment, or relating to the establishment of transportation rates, fares, charges, or classifications, or for preserving and improving safety, economy, and efficiency of operation, or for controlling, regulating, preventing, or otherwise eliminating destructive, oppressive, or wasteful competition, or for regulating stops, schedules, and character of service, or for other cooperative working arrangements.

#### Approval by Board

(c) The Board shall by order disapprove any such contract or agreement, whether or not previously approved by it, that it finds to be adverse to the public interest, or in violation of this Act, and shall by order approve any such contract or agreement, or any modification or cancellation thereof, that it does not find to be adverse to the public interest, or in violation of this Act; except that the Board may not approve any contract or agreement between an air carrier not directly engaged in the operation of aircraft in air transportation and a common carrier subject to the Interstate Commerce Act, as amended, governing the compensation to be received by such common carrier for transportation services performed by it.

\* \* \* \* \*

#### LEGAL RESTRAINTS

Sec. 414. [72 Stat. 770, 49 U.S.C. 1324] Any person affected by any order made under sections 402, 409, or 412 of this Act shall be, and is hereby, relieved from the operations of the "antitrust laws", as designated in section 1 of the Act entitled "An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes", approved October 15, 1914, and of all other restraints or prohibitions made by, or imposed under, authority of law, insofar as may be necessary to enable such person to do anything authorized, approved, or required by such order.

\* \* \* \* \*

## TITLE X--PROCEDURE

### Conduct of Proceedings

Sec. 1001. [72 Stat. 782, 49 U.S.C. 1421]. The Board and the Administrator, subject to the provisions of this Act and the Administrative Procedure Act, may conduct their proceedings in such manner as will be conducive to the proper dispatch of business and to the ends of justice. \* \* \*

\* \* \* \* \*

### COMPLAINTS TO AND INVESTIGATIONS BY THE ADMINISTRATOR AND THE BOARD

#### Filing of Complaints Authorized

Sec. 1002. [72 Stat. 783, 49 U.S.C. 1422] (a) Any person may file with the Administrator or the Board, as to matters within their respective jurisdictions, a complaint in writing with respect to anything done or omitted to be done by any person in contravention of any provisions of this Act, or of any requirement established pursuant thereto. If the person complained against shall not satisfy the complaint and there shall appear to be any reasonable ground for investigating the complaint, it shall be the duty of the Administrator or the Board to investigate the matters complained of. Whenever the Administrator or the Board is of the opinion that any complaint does not state facts which warrant an investigation or action, such complaint may be dismissed without hearing. \* \* \*

\* \* \* \* \*

#### Power to Prescribe Rates and Practices of Air Carriers

(d) Whenever, after notice and hearing, upon complaint, or upon its own initiative, the Board shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected or received by any air carrier for interstate or overseas air transportation, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, is or will be unjust or unreasonable, or unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Board shall determine and prescribe the lawful rate, fare, or charge (or the maximum or minimum, or the maximum and minimum thereof) thereafter to be demanded, charged, collected, or received, or the lawful classification, rule, regulation, or practice thereafter to be made effective: Provided, That as to

rates, fares, and charges for overseas air transportation, the Board shall determine and prescribe only a just and reasonable maximum or minimum, or maximum and minimum rate, fare, or charge.

#### Rule of Rate-making

(a) In exercising and performing its powers and duties with respect to the determination of rates for the carriage of persons or property, the Board shall take into consideration, among other factors-

(1) The effect of such rates upon the movement of traffic;

(2) The need in the public interest of adequate and efficient transportation of persons and property by air carriers at the lowest cost consistent with the furnishing of such service;

(3) Such standards respecting the character and quality of service to be rendered by air carriers as may be prescribed by or pursuant to law;

(4) The inherent advantages of transportation by aircraft; and

(5) The need of each air carrier for revenue sufficient to enable such air carrier, under honest, economical, and efficient management, to provide adequate and efficient air carrier service.

#### Removal of Discrimination in Foreign Air Transportation

(b) Whenever, after notice and hearing, upon complaint, or upon its own initiative, the Board shall be of the opinion that any individual or joint rate, fare, or charge demanded, charged, collected, or received by any air carrier or foreign air carrier for foreign air transportation, or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, is or will be unjustly discriminatory, or unduly preferential, or unduly prejudicial, the Board may alter the same to the extent necessary to correct such discrimination, preference, or prejudice and make an order that the air carrier or foreign air carrier shall discontinue demanding, charging, collecting, or receiving any such discriminatory, preferential, or prejudicial rate, fare, or charge or enforcing any such discriminatory, preferential, or prejudicial classification, rule, regulation, or practice.



### Suspension of Rates

(g) Whenever any air carrier shall file with the Board a tariff stating a new individual or joint (between air carriers) rate, fare, or charge for interstate or overseas air transportation or any classification, rule, regulation, or practice affecting such rate, fare, or charge, or the value of the service thereunder, the Board is empowered, upon complaint or upon its own initiative, at once, and, if it so orders, without answer or other formal pleading by the air carrier, but upon reasonable notice, to enter upon a hearing concerning the lawfulness of such rate, fare, or charge, or such classification, rule, regulation, or practice; and pending such hearing and the decision thereon, the Board, by filing with such tariff, and delivering to the air carrier affected thereby, a statement in writing of its reasons for such suspension, may suspend the operation of such tariff and defer the use of such rate, fare, or charge, or such classification, rule, regulation, or practice, for a period of ninety days, and, if the proceeding has not been concluded and a final order made within such period, the Board may, from time to time, extend the period of suspension, but not for a longer period in the aggregate than one hundred and eighty days beyond the time when such tariff would otherwise go into effect; and, after hearing, whether completed before or after the rate, fare, charge, classification, rule, regulation, or practice goes into effect, the Board may make such order with reference thereto as would be proper in a proceeding instituted after such rate, fare, charge, classification, rule, regulation, or practice had become effective. If the proceeding has not been concluded and an order made within the period of suspension, the proposed rate, fare, charge, classification, rule, regulation, or practice shall go into effect at the end of such period: Provided, That this subsection shall not apply to any initial tariff filed by any air carrier.

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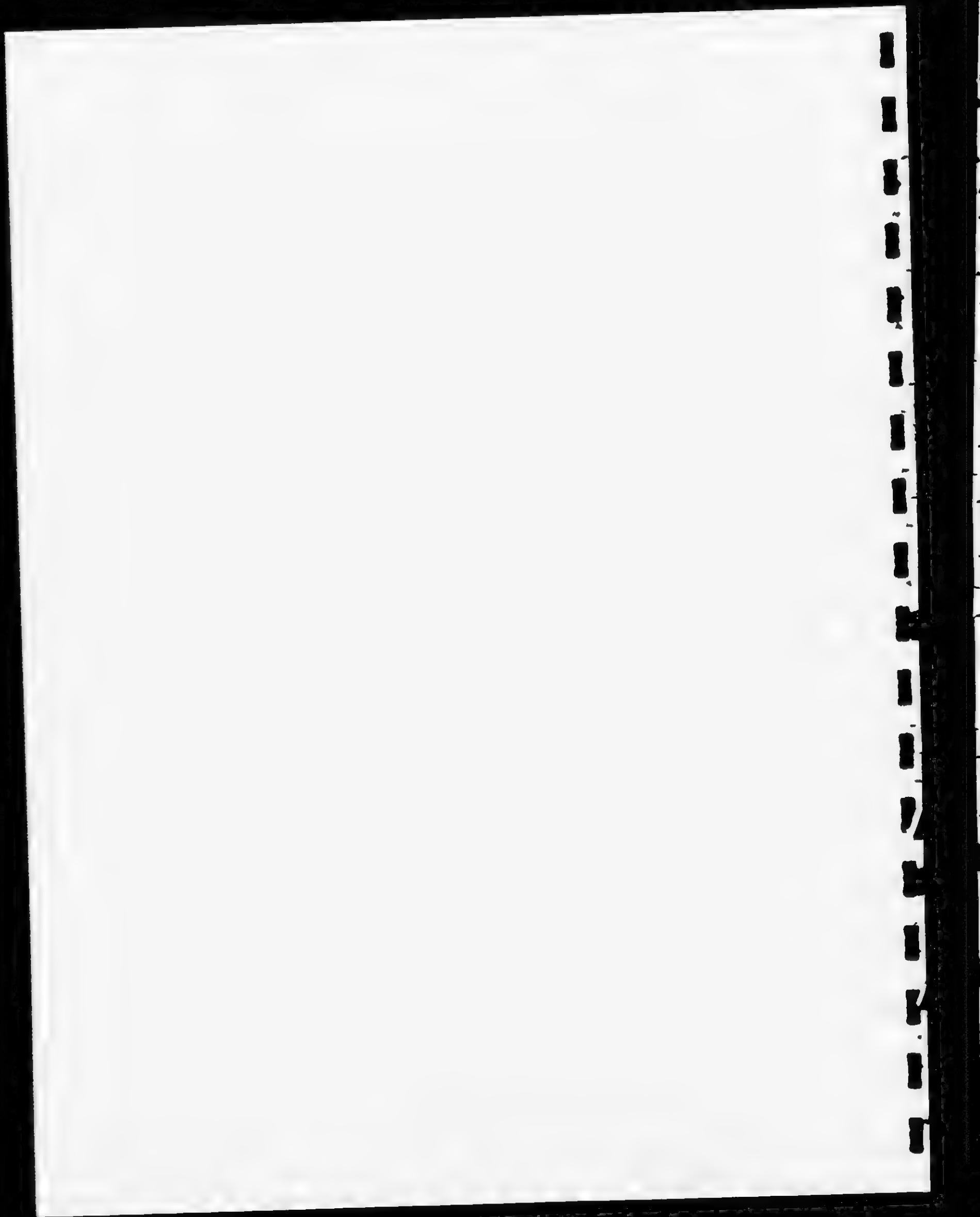
### JUDICIAL REVIEW OF ORDERS

Orders of Board and Administrator Subject to Review

\* \* \* \* \*

### Findings of Fact Conclusive

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Sec. 1006. [72 Stat. 795, as amended by 74 Stat. 255, 75 Stat. 497, 49 U.S.C. 1486] (e) The findings of facts by the Board or Administrator, if supported by substantial evidence, shall be conclusive. No objection to an order of the Board or Administrator shall be considered by the court unless such objection shall have been urged before the Board or Administrator or, if it was not so urged, unless there were reasonable grounds for failure to do so.



# APPENDIX B

TABLE 1

TRANSMATLANTIC PASSENGER TRAFFIC 1963-1968  
TO AND FROM THE UNITED STATES

	Scheduled Services	Charter Services		
		Route Carriers	Charter Carriers	Total
1963	U.S. Flag Foreign Flag Total	50,756 257,577 308,333	30,552 4,757 35,309	81,308 262,334 343,642
1964	U.S. Flag Foreign Flag Total	21,226 329,693 350,919	48,398 10,674 59,072	69,624 340,367 409,991
1965	U.S. Flag Foreign Flag Total	43,707 321,323 365,100	83,552 21,615 105,167	127,259 343,008 470,267
1966	U.S. Flag Foreign Flag Total	73,742 214,549 388,282	183,320 23,210 206,530	257,062 337,759 594,822
1967	U.S. Flag Foreign Flag Total	134,889 277,288 412,177	300,361 51,270 351,631	435,250 328,558 763,808
1968	U.S. Flag Foreign Flag Total	133,528 258,202 391,730	395,194 120,169 515,363	528,722 378,371 907,093
				Total
				979,466 1,519,454 2,498,920
				1,233,182 1,796,417 3,029,599
				1,498,829 2,171,443 3,670,272
				1,774,300 2,483,423 4,257,822
				2,254,997 2,720,587 4,981,584
				2,486,590 2,900,902 5,387,492



Table II

SHARE OF TRANSATLANTIC PASSENGER MARKET BY CLASS  
OF SERVICE AND TYPE OF CARRIER  
1963-1968

	Scheduled Services	Charter Services		
		Route Carriers	Charter Carriers	Total
1963				
U.S. Flag	36.0	2.0	1.2	39.2
Foreign Flag	50.3	10.3	0.2	60.8
Total	86.3	12.3	1.4	100.0
1964				
U.S. Flag	38.4	0.7	1.6	40.7
Foreign Flag	48.1	10.9	0.3	59.3
Total	86.5	11.6	1.9	100.0
1965				
U.S. Flag	37.4	1.2	2.3	40.8
Foreign Flag	42.8	8.7	0.6	52.2
Total	80.2	9.9	2.9	100.00
1966				
U.S. Flag	35.6	1.7	4.3	41.7
Foreign Flag	50.4	7.4	0.6	58.3
Total	86.0	9.1	4.9	100.0
1967				
U.S. Flag	36.5	2.7	6.0	45.3
Foreign Flag	48.2	5.6	1.0	54.7
Total	84.7	8.3	7.0	100.0
1968				
U.S. Flag	36.4	2.5	7.3	46.2
Foreign Flag	46.8	4.8	2.2	53.8
Total	83.2	7.3	9.5	100.0

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals  
for the District of Columbia Circuit

No. 23012

FILED 1 - 1969

*Nathan J. Paulson*  
CLERK

NATIONAL AIR CARRIER ASSOCIATION  
AMERICAN FLYERS AIRLINE CORPORATION  
CAPITOL INTERNATIONAL AIRWAYS, INC.  
OVERSEAS NATIONAL AIRWAYS, INC.  
SATURN AIRWAYS, INC.  
TRANS INTERNATIONAL AIRLINES, INC.  
WORLD AIRWAYS, INC.,

Petitioners

v.

CIVIL AERONAUTICS BOARD,

Respondent

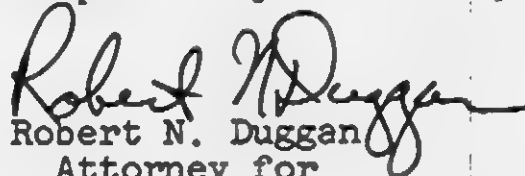
STATEMENT OF INTERVENOR, PAN AMERICAN WORLD AIRWAYS, INC.,  
IN LIEU OF BRIEF

Pan American World Airways, Inc. ("Pan American"), which was granted intervention in this case by order of this Court filed June 12, 1969, will not file a Brief. It has reviewed the Brief of Respondent, Civil Aeronautics Board, and believes that that document accurately states the facts and law applicable in this case. As requested by Respondent, we believe that the orders of the Civil

Aeronautics Board under review should be affirmed.

Pan American does not, however, waive any procedural rights in this proceeding and respectfully requests that it be allowed to participate in any future procedural steps that may be scheduled by the Court.

Respectfully submitted,

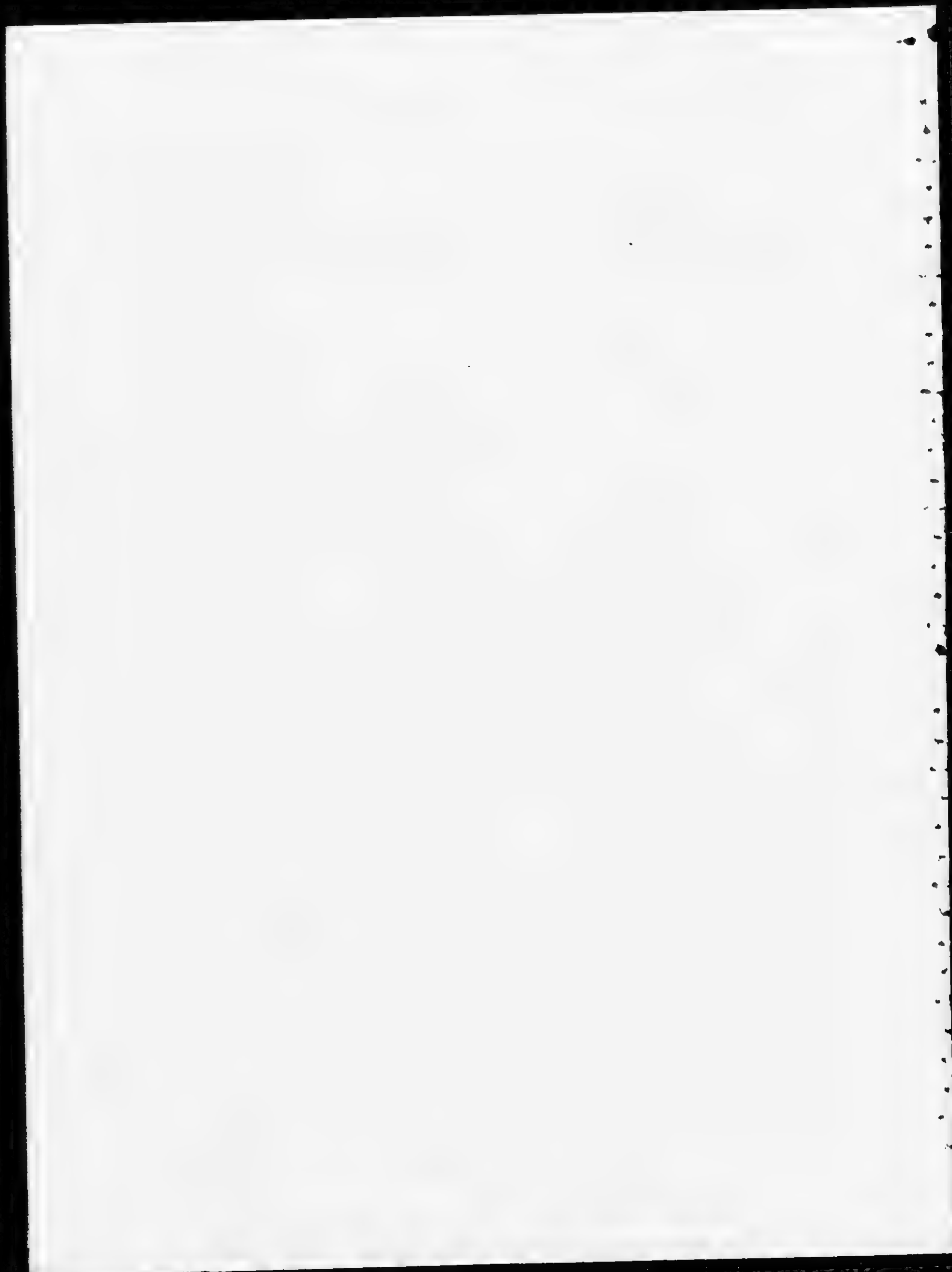


Robert N. Duggan  
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Pan American World Airways, Inc.

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Dated: October 16, 1969  
New York, New York





Certificate of Service

I hereby certify that this 16th day of October, 1969, copies of the foregoing Statement in Lieu of Brief have been served upon the following persons by first class mail, postage prepaid:


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Robert N. Duggan

Dated: October 16, 1969  
New York, New York

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 23,012

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NATIONAL AIR CARRIER ASSOCIATION; AMERICAN FLYERS AIR-  
LINE CORPORATION; CAPITOL INTERNATIONAL AIRWAYS, INC.;  
OVERSEAS NATIONAL AIRWAYS, INC.; SATURN AIRWAYS, INC.;  
TRANS INTERNATIONAL AIRLINES, INC.; WORLD AIRWAYS, INC.,  
*Petitioners,*

v.

CIVIL AERONAUTICS BOARD,

*Respondent,*

PAN AMERICAN WORLD AIRWAYS, INC., et al.,

*Intervenors.*

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*On Petition for Review of Orders of the  
Civil Aeronautics Board*

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REPLY BRIEF FOR PETITIONERS

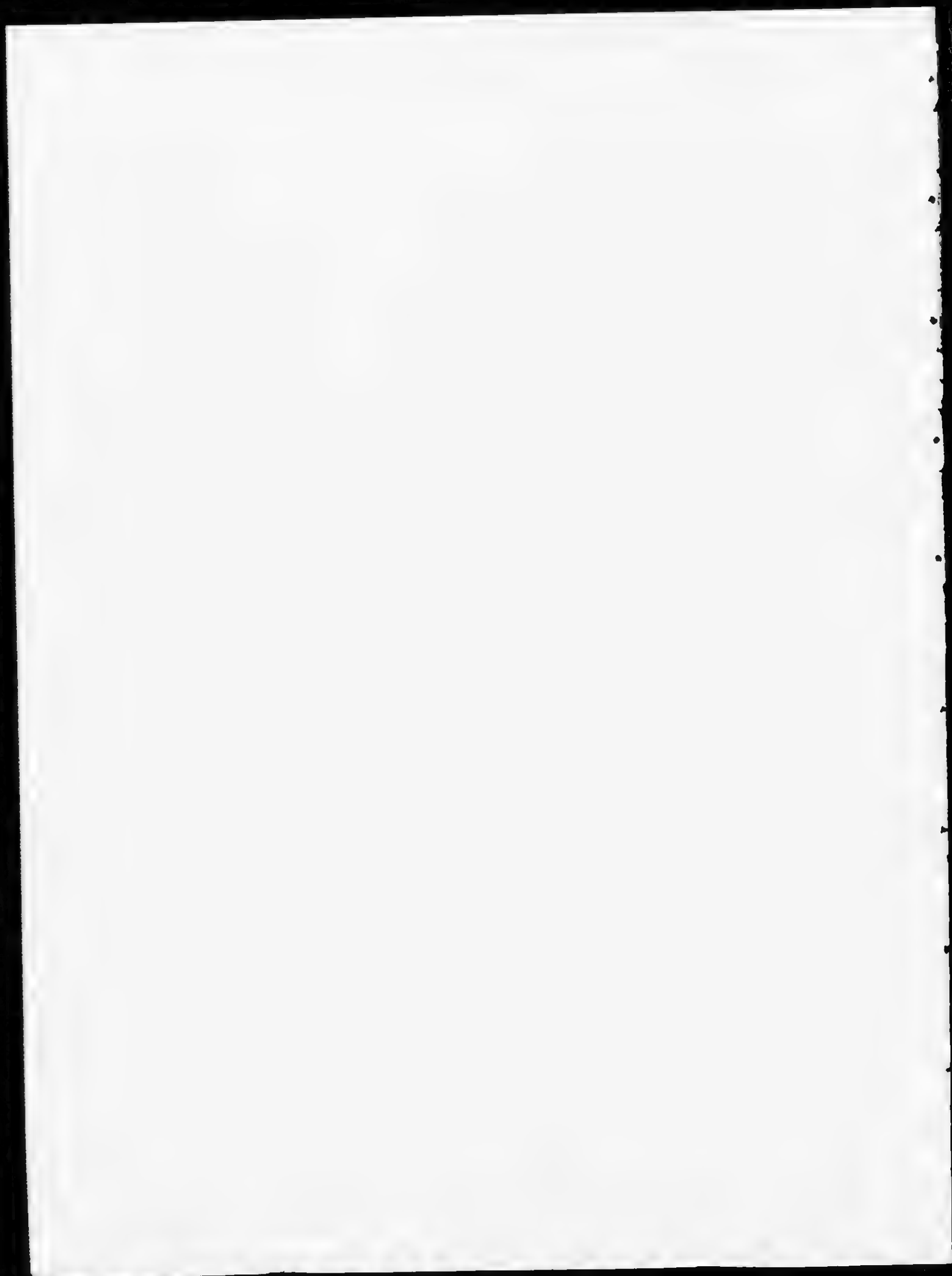
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United States Court of Appeals  
for the District of Columbia Circuit

FILED NOV 7 1969

*Nathaniel J. Tuckson*  
Clerk

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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No. 23,012

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NATIONAL AIR CARRIER ASSOCIATION; AMERICAN FLYERS AIR-  
LINE CORPORATION; CAPITOL INTERNATIONAL AIRWAYS, INC.;  
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*On Petition for Review of Orders of the  
Civil Aeronautics Board*

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REPLY BRIEF FOR PETITIONERS

I.

In an effort to justify its failure either to conduct an evidentiary hearing with respect to the affinity group, incentive group or group inclusive tour (GIT) fares, or to give any real explanation for its approval of them, the Board argues that these fares are "time-honored elements of the fare structure" which raised no new or serious issues, and that the only really "controversial" fare in this

case is the so-called "bulk" or "CBIT" fare. The facts, however, do not support either the Board's characterization of these fares as "time-honored," or its suggestion that NACA has simply renewed "familiar" contentions which have been "repeatedly" urged and rejected in the past.

As we show briefly below, the supplementals have on *only one* prior occasion—in 1962—challenged any of the fares, and the contention that the Board has definitively settled all questions relating to the lawfulness *vel non* of the affinity, incentive and GIT fares in prior decisions is inaccurate.

A. *The Affinity Group Fare.* This fare was first introduced in 1962 and was challenged by the supplementals at that time. Although the Board did approve the fare, its decision was narrowly based upon the specific economic circumstances then in existence. *IATA Group Fares Agreement*, 36 C.A.B. 33 (1962). For example, the Board specifically found that the 1962 fare was significantly higher than charter rates, and that in any event its impact upon the supplementals could not be serious since transatlantic charters at that time were a negligible portion of the supplementals' total traffic.<sup>1</sup> 36 C.A.B. at 38-40. With respect to the discrimination issue, the Board noted that the fare was to be available to "spontaneous" groups as well as groups with "prior affinity." 36 C.A.B. at 41.

A year later, however, when IATA eliminated the provision allowing "spontaneous" groups to use the fare and placed a numerical limit on the size of affinity groups which would be eligible, the

<sup>1</sup> The Board found that in 1961 transatlantic charter revenues accounted for only 4.1 per cent of the revenues of the carriers performing such charters. By comparison, in 1968 transatlantic charter revenues, as shown by the record in the investigation (Ex. NACA-216), accounted for 18 per cent of total revenues, and 43 per cent of civil charter revenues, of the six authorized supplementals.

Board expressed serious concern over the discriminatory character of the fare:

"The affinity restriction itself represents a very substantial restriction of these fares to the general public. Although the Board approved such restriction a year ago and is prepared to approve that aspect of the instant agreement, *we will not be prepared to approve such restrictions indefinitely. Stated differently, we believe the public interest requires that these fares eventually be made available to all groups whether or not the members have some affinity with one another.* In this context, we cannot conclude that the proposed numerical restriction, which would narrow not widen the availability of these fares, is consistent with the public interest. Accordingly, we shall condition our approval of the basic group fare resolutions to preclude the application of these restrictions in air transportation." *IATA Agreements re Passenger Fares*, 38 C.A.B. 1062, 1073-74 (1963) (emphasis added).

In the light of that decision, which is the Board's last word on the subject, the Board's approval of the affinity group fares in the present case without a word of discussion of the discrimination issue is wholly inexplicable. Particularly is this so in light of the fact that the instant agreement provides (1) the same affinity restriction which in 1963 the Board said it was not prepared to approve indefinitely, (2) the same numerical limitation which the Board expressly disapproved in 1963 (A. 160), and (3) sharply reduced fare levels which come very close to matching charter rates, and which are far below any fare which the Board has previously approved.<sup>2</sup>

<sup>2</sup>As stated in the Board's brief (p. 9, n. 9), the "old" affinity group fare levels of \$245 to \$300 New York-London have been reduced to \$200 in the off-season and \$212 in the "shoulder" season for groups of 40 or more. The



B. *The Incentive Group Fare.* Far from being "time-honored," the incentive group fares are new. The Board's brief purports to recognize this fact, but argues that the fare's "basic elements are substantially the same as the time-honored affinity group fare, and NACA's objection to it is the same as those it makes to the affinity group fare" (p. 22, n.21).

This statement is less than accurate. The only similarity between the incentive fare and the affinity group fare is in the fare levels. The eligibility provisions of the incentive group fares are different from, and more restrictive than, those applicable to the affinity group fares, and are therefore even more clearly discriminatory on their face. Under the IATA resolution, the fares are available only to:

"groups of employees and/or dealers and/or agents (including their spouses) of the same business firm(s), corporation(s) or enterprises(s) (excluding non-profit organizations) traveling under an established Incentive Travel Program, which rewards the employees/dealers/agents for past work or provides an incentive for future activities . . . ." (A. 166.)

The cost must be borne entirely by the sponsoring organization (and not passed on to the participants).

Although the Board cured one discriminatory aspect of these rules by providing, as a condition of its approval, that the fares must be made available to non-profit as well as profit-making organizations,

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Board's brief also cites a typical charter tariff which shows a per passenger charge of \$182.02 to \$198.80 (pp. 11-12). Although the Board uses the peak season IATA fares as the point of comparison, the evidence in the pending investigation (NACA Ex. 200) showed that most of the supplementals' charters are flown in the so-called "shoulder" season, when the IATA affinity fare is only \$212.

it wholly overlooked the fact that the fare still discriminates against employers without an "established Incentive Travel Program" who may wish to send a group of employees abroad for some other business purpose, or those who cannot afford a program which subsidizes the entire cost of a trip abroad and therefore want to absorb only a portion of the cost. More broadly, the fare discriminates against any person or organization willing to observe the conditions relating to transportation (e.g., group size and period of travel) but which does not meet the eligibility rules of the fare. Nowhere in the Board's decision was there even any acknowledgement of these issues, much less an explanation as to why the Board found these discriminatory features justified or in the public interest.

C. *The Group Inclusive Tour Fare.* Of all the fares which NACA challenged, the GIT fare is the only one which can fairly be said to be essentially unchanged by the current IATA agreement. This fare, however, can hardly be described as "time-honored" since it was first introduced in 1967 and was only considered by the Board on that one prior occasion. At that time, the Board concluded that the fare was not discriminatory because "there are no restrictions based on the characteristics or status of the user, i.e., occupations, club membership, etc." It also stated that "the tie-in feature with the purchase of ground accommodations does not seem an unreasonable one, in view of the considerable discount these fares provide from normal and other fares." Order E-24823, March 6, 1967.

Although the Board's brief argues that the Board's 1967 decision is "dispositive" of the discrimination issue, we disagree. In our view, the Board was correct in *Tour Basing Fares*, 14 C.A.B. 257, 259 (1951):

"In our opinion, the tour basing fares represent an objectionable form of discrimination, in that they embody the essentials of a tie-in sale. The reduced-

o

fare ticket can only be purchased if the passenger is willing to purchase hotel or other land accommodations. Such discriminatory practices are a far cry from the equal treatment the public is normally entitled to expect from a public utility. Nothing in the promotional and competitive considerations advanced by the carriers is sufficient to justify such a discrimination."

This decision was cited with approval in *Transcontinental Bus System, Inc. v. CAB*, 383 F.2d 446, 485 (5th Cir. 1967), *cert denied*, 390 U.S. 920 (1968). See also *Trailways of New England, Inc. v. CAB*, 412 F.2d 926, 934-35, n. 17 (1st Cir. 1969).<sup>3</sup> In view of these intervening judicial decisions, we submit that it was error for the Board to approve the GIT fares without an evidentiary hearing or, at the very least, some discussion of the discrimination issue which the fare presents.<sup>4</sup>

<sup>3</sup>It should be emphasized that the sections of the Act which prohibit unjust discrimination apply to both foreign and domestic air transportation. §§404(b), 1002(f), 49 U.S.C. §§1374(b), 1481(f). Thus, the rules and principles established in cases dealing with domestic fares are equally applicable to the international fares involved in this case. The anti-discrimination provisions of the Act are, of course, entirely independent of Section 412 which relates to inter-carrier agreements.

<sup>4</sup>The Board's brief (p. 44, n. 39) suggests that NACA is precluded from challenging the adequacy of the Board's findings in this Court because NACA failed to raise this issue below. In fact, however, NACA did contend before the Board that IATA resolutions could only be approved if the Board could find (1) that they served a serious transportation need or secured important public benefits and (2) that they were not unjustly discriminatory. And, surely, the Board knew that it was required by law to make adequate findings. There is thus no basis whatever to the Board's suggestion that NACA was also required to petition the Board for reconsideration. The one case cited by the Board, *Seaboard & Western Air Lines v. CAB*, 87 U.S. App. D.C. 78, 183 F.2d 975 (1950) is not in point, since the petitioner in that case *had* sought re-consideration and failed to raise the question of the adequacy of the Board's findings in its reconsideration petition.

The Board's attorneys, unwilling to base their case solely on the record, seek refuge in the argument that it was necessary for the Board to approve the IATA fare agreements by their effective date in order to avoid "serious international repercussions" which might result from an "open rate" situation. The Board's own order, however, does not mention this consideration at all. It is therefore wholly improper for the Board's attorneys to attempt to defend the Board's decision on grounds not relied upon by the agency itself.<sup>5</sup> *SEC v. Chenery Corp.*, 318 U.S. 80 (1943); *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168-69 (1962).

Moreover, the argument that IATA fare agreements must in effect be rubber-stamped by the Board and the courts because disapproval—or, indeed, deferral pending investigation—would have adverse international consequences has previously been rejected by the Board itself:

"To abrogate the right to disapprove an IATA agreement on the basis of its disruptive effects would reduce government review to a perfunctory exercise negating any need for review. The Board has no recourse but to disapprove agreements it considers to be inconsistent with the public interest not only from the standpoint of policy, but in the discharge of its

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<sup>5</sup>The "open rate" argument is particularly inapposite in this case because the IATA Resolutions, as originally adopted and filed, expressly provided that they would not become effective until the necessary Government approvals had been obtained (A. 130), and that the pre-existing fares would remain in effect "until 30 April 1969 or until the Resolutions adopted at Dallas in January 1969 become effective, whichever is later." (A. 131). It was only after the CAB proceedings in this case were under way - and the existence of strong opposition was apparent - that IATA notified the Board by letter that "all the words after 30 April 1969 should be deleted." (Ex. F to Petitioner's Motion for Stay.) It is thus apparent that IATA deliberately created the "open rate" problem, and that it could easily have resolved that problem by going back to the terms of its original agreement.

statutory obligations under the Federal Aviation Act of 1958. While it is unfortunate if in some instances the discharge of these obligations has a disruptive effect on IATA agreed fares, this can be corrected by IATA action." *IATA Agreements re Passenger Fares*, 38 C.A.B. 1063 (1963).

In a subsequent case involving a provision of an IATA fare agreement banning in-flight motion pictures, the Department of Justice, which now joins in the Board's brief, filed a Memorandum with the Board containing a devastating critique of the "open rate" argument:

"The second oft-repeated argument advanced in seeking Board approval is that disapproval would threaten the entire international rate structure. The imagined horrors of an 'open' rate situation are trotted out and vague references are made to the possibility that foreign governments might be annoyed by such a situation. In its original approval of IATA, the Board clearly envisioned these eventualities when it said:

Our approval of the resolution therefore assumes that after conference procedures have been complied with, an open rate may, *and indeed should*, exist if the rate proposals advanced at any conference are unreasonable or economically unsound and are not properly related to the reasonably attainable costs of the air carriers. [Emphasis added] 6 CAB 645

\* \* \*

"We realize that disapproval of the . . . agreements may well result in an open rate situation, but we do not subscribe to the belief that this eventuality would necessarily prejudice the public interest. It seems elementary that if the airlines can obtain approval of an otherwise objectionable anticompetitive agreement simply by raising the spectre of 'open rates,' they

have truly been given *carte/1/ blanche*." Comments of U.S. Department of Justice, CAB Docket No. 16605, pp. 7-8 (1965).

We submit that if Congress had wanted alleged international policy considerations to play an overriding role in cases of this kind, it would have made the Board's orders subject to review and approval by the President, and exempt from judicial review, as it did with respect to Board orders concerning certificates and permits to engage in overseas or foreign air transportation. See Sections 801 and 1006(a) of the Act, 49 U.S.C. §§1461, 1486(a); *Chicago & Southern Air Lines v. Waterman S.S. Corp.*, 338 U.S. 103 (1948). Congress did not so do, and thus for the Board summarily to approve an IATA fare wholly or largely because of its fear of international repercussions amounts to an improper abandonment of its responsibilities under both Section 412 and Sections 404(b) and 1002(f) of the Act. And for this Court to accept such a rationale—as to which there can be no support in an administrative record but only the agency's say-so—is in substance to negate any right of judicial review.<sup>6</sup>

### III.

The Board contends that its decision to approve the challenged fare agreements prior to its investigation of the bulk fares and the elimination of the roundtrip discount is analogous to a refusal to suspend a tariff pending investigation. Since the decision whether or not to suspend a tariff is a matter within its unreviewable discretion, the Board argues, its decision to approve the challenged fare agreements prior to a hearing on two of those agreements should similarly be considered a proper exercise of discretion.

<sup>6</sup>In this connection, it is noteworthy that the Board has cited no record evidence and no published authority to support its assertion that disapproval of the fare agreements or deferral of Board action pending an evidentiary hearing would have "serious international repercussions."



This argument is invalid because the analogy on which it is based is false. A Board refusal to suspend a tariff pending investigation is not a decision on the merits. It simply permits the carrier involved to charge the fares listed in the tariff until such time as the Board has issued a decision as to the legality of those fares. The Board's approval of the agreements involved in this case, on the other hand, was a decision on the merits. It was a final determination that the fares embodied in the agreement were neither unlawful nor adverse to public interest.

To be sure, the Board placed a time limit on its approval of the CBIT fares and the elimination of the round-trip discount, and ordered a hearing for the purpose of determining whether those fares should be approved beyond that date. But its approval for the period through March 31, 1970 was a final determination on the merits, which among other things, granted antitrust immunity to the agreements establishing those fares. A mere refusal to suspend a tariff, of course, does not have any such effect.<sup>7</sup>

Moreover, the Board's attempted analogy wholly ignores the fact that it failed to order any investigation at all of the affinity group, incentive group, and GIT fares, and granted final approval to these fares for the entire period of their effectiveness. There is no basis whatever to the Board's implication that the investigation which the Board did order might touch on these fares as well. The scope of that investigation was narrowly limited to the two specific fares.

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<sup>7</sup>As the Board's brief itself points out, a decision not to approve the IATA agreements would not have prevented the individual IATA carriers from filing and implementing their own individual tariffs. Thus, unlike a suspension order, a Board decision to defer approval of an agreement pending a hearing would not prevent any carrier from establishing fares unilaterally.



## IV.

The Board's attorneys attempt to brush off in a footnote (p. 35, n. 30) the well-established Board rule that an agreement which violates the antitrust laws cannot be approved unless there is a clear showing by the proponents that the agreement is required by a serious transportation need" or in order "to secure important public benefits." *IATA Credit Agreements*, 30 C.A.B. 1553, 1555 (1960); *Local Cartage Agreement Case*, 15 C.A.B. 850, 852-53 (1952). The Board's brief dismisses those cases with the comment that "burden of proof . . . is not really relevant to the hearing issue."

Admittedly, as Board counsel points out, the Board did not hold an evidentiary hearing in *IATA Credit Agreements*, but it did do so in *Local Cartage*. And, in any event, our point is not that this rule necessarily compels the Board to hold a hearing in every case to which it is applicable, but rather that in view of the highly complex economic issues involved in this case (which are summarized at pp. 26-27 of our principal brief), the IATA carriers could not sustain their burden of proof, and the Board could not make the requisite findings, except on the basis of an evidentiary record.

In an analogous case, this Court recently reversed a decision of the Federal Maritime Commission which had approved without a hearing an agreement which raised serious antitrust questions. Although the statute in that case expressly required a hearing, the Court's statement that "terse and summary treatment is . . . inappropriate for the disposition of antitrust issues" is equally applicable to the present case. *Marine Space Enclosures, Inc. v. Federal Maritime Commission*, D.C. Cir. No. 22,936, slip opinion at 17 (July 30, 1969). Also relevant here is the Court's observation that "if time was of the

essence, the appropriate solution was . . . to structure an expedited hearing" rather than to hold no hearing at all. *Ibid.*<sup>8</sup>

The practice of imposing a heavy burden of proof upon parties which seek agency approval (and legal immunity) for an agreement in violation of the antitrust laws has recently also been approved by the Supreme Court:

"Nor does the Commission's test, by requiring the conference to come forward with justification for the restraint, improperly shift the burden of proof . . . [O]nce an antitrust violation is established, this alone will normally constitute substantial evidence that the agreement is 'contrary to the public interest' unless other evidence in the record detracts from the weight of this factor." *Federal Maritime Commission v. Aktiebolaget Svenska Amerika Linen*, 390 U.S. 238, 245 (1968).

#### V.

We wish to make one final point. The Board, throughout its brief, argues that the supplemental carriers in this case are merely seeking protection against competition from the schedule carriers. This charge is wholly unwarranted. As the Board itself acknowledges, the scheduled carriers compete directly and vigorously with the supplementals in the charter field, and the supplementals have sought no relief from that competition. All we ask is that the scheduled

<sup>8</sup>In the cited case, the Court held that the agency was required to hold a hearing on the antitrust issues even though they had been raised only "in general terms;" it was sufficient that "the protest was more than a diffident clearing of the throat." In the present case, however, NACA's objections to the agreement were clear and specific, and were documented by as much economic and other data (including documents subpoenaed from IATA and its member carriers) as NACA was able to gather within the short time limits imposed by the Board.

carriers compete *fairly*, and that they not be permitted to use their monopoly power in the field of individually-ticketed transportation as a predatory competitive weapon, by raising normal first-class and economy fares in order to subsidize an array of below-cost and discriminatory group fares designed to divert potential charter passengers to scheduled service.

#### CONCLUSION

For the reasons stated above and in our opening brief, the orders under review should be set aside and the case remanded to the Board.

Respectfully submitted,

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